

**AGREEMENT REGARDING CHILD CUSTODY SERVICES  
AND PROCEEDINGS**

**BETWEEN THE**

\_\_\_\_\_ **TRIBE**

**AND THE**

**STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES**

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## **PART I.**

### **INTRODUCTION**

## **SECTION 1**

### **PREAMBLE**

Federal policy has historically dealt severely with Indian children and families. Policies of extermination, removal, reservations, relocation, termination, and assimilation were designed to disrupt Indian lives and families. These policies were very successful.

Congressional hearings during the early 1970's exposed a national scandal involving the mistreatment of Indian children and families. Two national surveys by the Association on American Indian Affairs ( AAIA ) in 1968 and 1975 in states with large Indian populations revealed that 25-35% of all Indian children nationally were placed in foster care, adopted, or institutionalized in some way , including placement in Indian testimony presented during the congressional hearings dealt with the tragic consequences of past federal policies.

Federal policies are difficult to change. Many federal policies that relate to Indians have been discredited and are no longer official federal policy. Nevertheless, remnants of those policies are so deeply embedded in the fabric of federal bureaucracies that actions of those bureaucracies are taken as if old policies still exist.

The Indian Child Welfare Act of 1978 was passed by Congress to reverse the trend of the destruction of Indian families. The intent of the Act was to protect Indian children and families by defining how cases involving Indian children should be handled. Indian tribes were given broad authority to determine the best interests of their children and families.

This Agreement is the result of a partnership formed by Indian tribes in the State of Washington, the Washington State Department of Social and Health Services, and the Bureau of Indian Affairs. The intent of this Agreement is to protect Indian children and families by maintaining the integrity of the family unit and resolving family problems in a way that is beneficial to Indian children.

The children are the most important resource that Indian people have. This principle is also held by most people. The child is viewed as a sacred being, close to the creator with strong spiritual ties. Most tribal and urban Indian communities share this belief and the responsibilities associated with protecting the children, family and extended families.

This Agreement was developed in the spirit of providing the mechanism for maximum participation by tribes in child welfare services for the protection of Indian children and families. This Agreement goes beyond the scope of the Indian Child Welfare Act and demonstrates the concerns shared by tribal leaders and representatives, the Bureau of Indian Affairs and the Washington State Department of Social and Health Services.

This Agreement represents the spirit of cooperation through tribal, state, and federal participation in the development of the comprehensive working relationship between the Department of Social and Health Services and the tribes for delivery of social and child welfare services. Consistent with the Indian Child Welfare Act and the Indian child welfare provisions of the Washington State Administrative Code, the Agreement was developed to address barriers to implementing services. The Agreement sets forth principles and concepts agreed to by the tribes and the Department. It specifies the roles and duties of the parties. It is intended to be a blueprint for the development of policy, local agreements, training, and other necessary activities to be undertaken jointly by the tribes and the Department, for the purpose of carrying into affect on a daily basis the provisions contained herein.

Unless in conflict with the provisions of the Act, this Agreement is not intended to limit in any way the rights of any individual provided by state law or the requirements of state law applicable to child custody matters.

## SECTION 2

### LEGAL AUTHORITY

Pursuant to the laws of the State of Washington, the Department of Social and Health Services (DSHS) is entrusted with the authority and responsibility to strengthen and encourage family unity and to safeguard, protect, and contribute to the welfare of the children of the State through a comprehensive and coordinated program of public child welfare services.

The Department of Social and Health Services recognizes that tribal governments, in their *parens patriae* capacity, have a compelling interest in promoting and maintaining their political, social, and cultural integrity and that tribes, to further that interest, have substantial legal authority to determine the type of care received by Indian children who require placement away from the home of their parents or Indian custodians. The *parens patriae* interest of tribes includes placements of Indian children made by DSHS as well as placements made by child placement agencies licensed or certified by DSHS.

The Indian Child Welfare Act (hereinafter the “Act”), 25 U.S.C. 1901 et seq. (Public Law 95-608), authorizes states and Indian tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction over child custody proceedings involving such children. The Department of Social and Health Services and the \_\_\_\_\_ Tribe (hereinafter the “Tribe”) through their undersigned representatives, hereby enter into the following Agreement to further the national policy, declared in 25 U.S.C. 1902, to promote the stability and security of Indian tribes and families.

This Agreement is entered into to implement the Act, to supplement the requirements of the Act, and to apply any DSHS regulations, directives, policies or manual instructions consistently with the terms of this Agreement and the Act.

#### Full Faith and Credit: Enforcement of Tribal Court Orders

In carrying out this Agreement and the Act, DSHS shall give full faith and credit to the public acts, records and judicial proceedings of the tribal application to Indian child custody proceedings to the same extent that gives full faith and credit to the public acts, records, and judicial proceedings of other states.

Whenever it may be necessary for the Tribe to obtain enforcement in the courts of the State of Washington of orders entered in Tribal child custody proceedings, DSHS, upon the request of the Tribe, agrees to assist the Tribe to obtain such

enforcement to the same extent that DSHS assists other states in obtaining enforcement of the child custody orders issued by such other states.

Whenever DSHS has custody of and Indian child pursuant to an order of the tribal court, the Tribe agrees to assist DSHS in enforcement of such order, including if necessary, utilization of tribal police and the resources of other appropriate tribal governmental agencies.

Whenever DSHS has custody of Indian child pursuant to an order of the superior court and the child has been placed by DSHS in a home located within the boundaries of the Tribe's reservation or whenever an Indian child's parent, legal custodian, or any other person is a party to a superior court child custody proceeding and is located within the boundaries of the Tribe's reservation, the Tribe shall give full faith and credit to the orders of the superior court in such proceeding shall assist DSHS in the enforcement of such order, to the same extent that the Tribe assists any other tribes or states in obtaining enforcement of the child custody orders issued by such other tribes or states.

#### Jurisdiction

DSHS recognizes that the Tribe has exclusive original jurisdiction with respect to the matters covered by this Agreement that involve Indian children who are resident or domiciled within the Tribe's reservation or who are wards of the tribal court. Nothing in this Agreement shall be deemed a waiver or limitation of the Tribe's exclusive jurisdiction.

Except as otherwise agreed herein, this Agreement likewise shall not be deemed a waiver or limitation of the jurisdictional powers or prerogatives of the State or any of its subdivisions with respect to matters which are not within the exclusive jurisdiction of the Tribe.

## **SECTION 3**

### **SUMMARY OF INDIAN CHILD WELFARE ACT**

The purpose and intent of the Indian Child Welfare Act is to protect the best interests of the Indian children and to preserve tribal integrity. The Act declares that the best interests of Indian children are realized by promoting the stability and security of Indian families and tribes and declares that Indian children, as tribal resources, are vital to the existence and authority of tribal and state courts to make decisions regarding the welfare, care, custody and control of Indian children.

The underlying promise of the Act is that Indian tribes have sovereign rights and legal powers with respect to Indian children and, as governments, have a vital legal role to play in determining whether Indian children should be separated from their families and culture. The Act provides that any separation that does occur should result, whenever possible in an Indian home placement that reflects the unique values of Indian culture.

The Act sets forth the policy of the Nation to protect the best interests of Indian children and to promote stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing assistance to Indian tribes in the operation of child and family service programs.

Underlying these minimum federal standards is the basic intent of the Act to protect the integrity of Indian families and to place Indian children in foster care or for adoption only as a last resort.

The measurements taken to accomplish the intent of the Act include:

1. Recognizing the jurisdiction of Indian tribal courts.
2. Requiring non-Indian courts, in the placement of Indian children and in the placement of Indian children and in the termination of parental rights of parents of Indian children, to observe standard stricter than those ordinarily required by state law
3. Requiring the placement of Indian children preferentially in Indian homes, in the absence of good cause to the contrary.
4. Funding tribal services to families and children.
5. Requiring notice to Tribes and parents of state court child custody proceedings.
6. Providing for tribal and parental access, in accordance with applicable law, to records maintained by the state.
7. Requiring that states give full faith and credit to the public acts, records, and judicial proceedings of Indian Tribes.



## **PART II.**

### **GENERAL PROVISIONS**

## **SECTION 1**

### **DEFINITIONS**

The following definitions, mostly taken from the Act, shall apply to this Agreement unless such application is inconsistent with the context.

- A. Act – the Indian Child Welfare Act, 25 U.S.C 1901 et seq.
- B. Child custody proceedings means and includes:
  - 1. Foster care placement – any action placing an Indian child in a foster home or institution or in the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.
  - 2. Termination of parental rights - - any action resulting in the termination of the parent-child relationship.
  - 3. Preadoptive placement – the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.
  - 4. Adoptive placement – the permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents. However, the term or terms does apply to all other domestic relations proceeding in which an Indian child is placed in the custody of DSHS or in which such placement has been requested.

- C. Contact person – a person (s) designated by the Tribe for initial liaison between the Tribe and DSHS and person(s) designated by DSHS for initial liaison between DSHS and the Tribe to carry out this Agreement and resolve problems arising thereunder, as more fully described in Part II, Section 3 of this Agreement.

D. Extended family member – as defined by the law or custom of the Tribe or, should the Tribe fail to identify such law or custom, the term shall mean a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or step-parent.

E. Indian – any person who is a member of any Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in Section 3 (g) of the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1602 (g)), or, for purposes of implementing 25 U.S.C. Sec. 1917, the term shall mean any adopted individual who has reached the age of eighteen and who evidences an intent to or has petitioned the court which entered the final decree of adoption for information on the individual's tribal affiliation and for other information that may be necessary to protect any rights flowing from the individual's tribal relationship.

F. Indian child – any unmarried person who is under age eighteen and is either:

- a. a member of the Tribe; or
- b. eligible for membership in the Tribe and is the biological child of a member of the Tribe; or
- c. a member of another tribe and domiciled or resident on the reservation of the Tribe; or
- d. eligible for membership in another tribe and is the biological child of a member of an Indian tribe and is domiciled or resident on the reservation of the Tribe.

G. Indian child's tribe – the Tribe unless an Indian child, who is a member of or eligible for membership in another tribe, has more significant contacts with such other tribe. Any dispute regarding the identity of an Indian child's tribe for purposes of this Agreement shall be decided by the court with jurisdiction over the child custody proceeding.

H. Indian custodian – any Indian person who has custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

I. Indian interpreter – any person recognized by the Tribe or an Indian organization designated by the Tribe as an interpreter of

the culture, customs, child rearing practices and standards of the Tribe.

J. Indian organization – any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians, and which provides social or child welfare services to Indian families.

K. Indian tribe – the Tribe unless the context includes other tribes, in which case the term shall mean any Indian tribe, band, nation, or other organized group or community of the Indians recognized as eligible for the services provided to Indians by the United States, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1602 (c)), as amended, or any other tribe, band, nation, group or community recognized as an Indian tribe by the Tribe, by any state commission, agency or authority or by Canada, any of its provinces, or any tribe in Canada.

L. Parent – any biological parent or parents of an Indian child or any person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established pursuant to state law or tribal law or custom.

Qualified expert or qualified expert witness:

a. A professional person recognized and approved by the Tribe and DSHS as having substantial education and experience in the area of his or her specialty, and extensive knowledge of the prevailing social and cultural standards, family organization and child rearing practices within the Indian community relevant to the Indian child who is the subject of the child custody proceeding or other action.

b. A person recognized and approved by the Tribe and DSHS as having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian community relevant to the child who is the subject of the child custody proceeding or other action.

c. A member of the child's Indian community who is recognized within the community as an expert in tribal customs and practices pertaining to family organization and child-rearing.

M. Qualified expert – in the interracial placement of Indian children – a qualified expert with specific experience in helping minority children, and the families with which they have been interracial placed in foster care, preadoptive care or in adoptive placement, to cope with and adjust to social or psychological issues associated with such placements.

15. Reservation – the reservation of the Tribe unless the context includes other reservations, in which case the term shall mean Indian country as defined in 18 U.S.C. Sec. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

16. Secretary – Secretary of the Interior.

17. Tribal court – the court or other administrative body of the Tribe vested with authority over child custody proceedings unless the context includes other tribal courts, in which case the term shall mean a court with jurisdiction over child custody proceedings and which is a Court of Indian Offenses, a court established and operated under the code or custom of any Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. When the Tribe designates the tribal court of another tribe to act on its behalf, the term shall also include the tribal court of another tribe.

18. Tribe's social services program – the tribal program, however named, with responsibility for provision of social services to Indian children and families.

## **SECTION 2**

### **IDENTIFICATION OF TRIBAL LAW, STANDARDS, AND PLACEMENT PREFERENCES**

Within 60 days following the execution of this Agreement, the Tribe, in the form of an amendment to this Agreement, shall provide DSHS with its prevailing social and cultural standards, as referred to on pages 128-129 and page 139 of this Agreement, its order of foster care and adoptive placement preferences, if any, and its tribal law or custom on matters where the Agreement refers to tribal law or custom.

If the Tribe does not provide such information to DSHS, DSHS may proceed consistent with the Act, to implement the affected provisions of this Agreement without regard to such law, custom or such preferences. However, in carrying out the placement preference requirements of the Act and this Agreement, DSHS must apply the Tribe's prevailing social and cultural standards. DSHS will make reasonable inquiry and investigation to determine the Tribe's standards.

### **SECTION 3 CONTACT PERSONS**

\_\_\_\_\_ or his/her designee(s) is the contact person(s) or the Tribe who is to be provided complete information on the child in order to enable the Tribe to evaluate a proposed social services plan and participate in other matters authorizing the Tribe's participation under this Agreement.

In addition, persons from the Tribe's social services program may be authorized by the Tribe to receive confidential information on behalf of the Tribe. Whenever such authorization is approved, the Tribe will provide DSHS with written notification of the identities of the persons so authorized.

A local DSHS supervisor for the Children's Protective Services (CPS) and/or Child Welfare Services (CWS) is the DSHS contact person. The Tribe will be notified of the identity of the DSHS contact person.



## **SECTION 4**

### **PURCHASE OF CHILD WELFARE, SOCIAL AND OTHER SERVICES**

DSHS, through the state plan, agrees to purchase “child welfare services” (as defined in 42 U.S.C. 625 (a) (1)) and “social services” (as defined in 42 U.S.C. 1397) by contract from the Tribe. In addition, DSHS also agrees to purchase by contract from the Tribe all “other services” provided by DSHS to or on behalf of Indian children and families. The obligation of DSHS to enter into contracts with the tribe for purchase of services is subject to the terms of the Union-Management Agreement and the availability of funds specifically identified by DSHS or appropriated by the legislature for this purchase. In compliance with all federal and state laws and regulations governing the utilization of funds provided through purchase of services contracts, the Tribe will provide such services to or on behalf of Indian children and families.

Purchase of services contracts shall be separately negotiated agreements to be renegotiated as specified in such contracts. DSHS agrees to provide the Tribe a timely opportunity to participate in the formulation of the biennial budget proposals and enter into contracts if agreed. Budget formulation participation shall be limited to matters pertinent to securing funds to finance DSHS purchase of services contracts with the Tribe.

Following execution of this Agreement, DSHS agrees, in cooperation with the Tribe, to explore whether purchase of services contracts can be entered into prior to July 1, 1987.

For cross-reference purposes only, purchase of services contracts will be attached to this Agreement as exhibits. The contracts will not form part of this Agreement. Should any provisions of this Agreement and the contracts conflict, the provisions of the contracts shall govern.

## **SECTION 5**

### **DSHS SERVICES FOR INDIAN FAMILIES**

In addition to services specifically established for Indian families in this Agreement or otherwise, DSHS agrees to make available to Indian families all of the other services available to any eligible families in the circumstances covered by this Agreement.

## **SECTION 6**

### **APPLICABILITY OF AGREEMENT TO STATE LICENSED CHILD PLACEMENT AGENCIES**

DSHS agrees to include the applicable provisions of this Agreement as part of the minimum requirements for the state licensing of private child placement agencies that serve Indian children, and to publish the necessary additions to the minimum licensing requirements, as required by RCW 74.13.031 and RCW 74.15 within 150 days following the effective date of this Agreement.

DSHS agrees that within 180 days following the effective date of this Agreement, private child placement agencies licensed by DSHS shall be subject to the applicable provisions of this Agreement.

Immediately following approval of this agreement by DSHS and the Tribe, each party shall designate a representative(s) to work together in identifying all provisions of this Agreement to be applied to State licensed child placement agencies and, based on such provisions, in preparing for publication the new minimum licensing requirements for such agencies. Except for those provisions of this Agreement that pertain to the DSHS as a governmental agency and, therefore, can only be carried out by DSHS, it is the intent of the parties that all provisions of this Agreement be made applicable to State licensed child placement agencies.

Reports required by this Agreement to be prepared by DSHS shall, for matters handled by State licensed child placement agencies, be prepared by such agencies and filed with DSHS.

The Tribe agrees to designate a representative to assist DSHS in monitoring a child placing agency's compliance with the licensing requirements based on this Agreement. Such compliances shall be monitored in a manner mutually acceptable to the parties' designated representative(s). Reports on agency compliance will be filed with DSHS and the Tribe. DSHS will enforce compliance with the minimum licensing requirements based on this Agreement and, when necessary, agrees to impose appropriate sanctions on any agency that refuses to maintain such compliance.

## **SECTION 7**

### **EDUCATION OF COURTS, LAWYERS, AND LAW ENFORCEMENT**

DSHS and the Tribe cooperatively agree to sponsor a program to educate judges, lawyers, and law enforcement personnel who are involved in Indian child custody proceedings about the provisions of this Agreement and the Act and the special cultural and legal considerations pertinent to such proceedings.

## **SECTION 8**

### **INTER-AGENCY COORDINATION**

The Tribe and DSHS agree to coordinate with other agencies affected by the terms of this Agreement. Such coordination will include training, on-going consultation, development and negotiation of agreements with other agencies, and other appropriate measures to ensure that this Agreement is understood and effectively implemented.

## **SECTION 9**

### **TRAINING**

DSHS agrees to require its professional employees who have direct service responsibility with respect to Indian children and families to receive at least eight (8) hours of training annually in child welfare services pertinent to an Indian clientele, from Indian and other professionals qualified to provide such training. All other employees whose service area includes the Tribe shall receive information on providing child welfare services to Indian children and families. The Tribe and DSHS shall cooperatively develop and sponsor appropriate training.

DSHS agrees to notify the Tribe of child welfare services training provided by DSHS or others for DSHS employees. Such training will be open to the Tribe's child welfare services employees.

The Tribe agrees to notify DSHS of child welfare services training provided by the Tribe or others for tribal employees. Such training shall be open to DSHS child welfare services employees.

Indian child welfare services training will include, but not be limited to the following areas:

1. Procedures to be followed in compliance with this Agreement.
2. Provision of protective services.
3. Provision of emergency foster care placement services.
4. Legal requirements to complete involuntary foster care placement or termination of parental rights.
5. Voluntary foster care placement.
6. Applicability of placement preference standards.
7. Records maintenance.
8. Adoption of Indian children

DSHS and the Tribe agree to assist each private child placing agency serving Indian children to develop and deliver annual training in Indian child welfare services.

DSHS agrees to make application for federal matching funds, as applicable, for the training specified in this Agreement. The duty to provide training pursuant to this Agreement is conditioned upon the availability of funding.

## **SECTION 10**

### **WAVIER OF AGREEMENT PROVISIONS**

A duly designated representative(s) of DSHS and the Tribe, on a case-by-case basis, may agree in writing to waive any of the provisions of this Agreement. The waiver shall identify the provision(s) to be waived, the case or circumstances to which the waiver is applicable, the reasons for the waiver and the duration of the waiver.

Any provision of this Agreement may be waived generally by agreement of DSHS and the Tribe, i.e. without regard to a particular case or circumstance. A general waiver of any provision of this Agreement shall take effect upon the date the parties agree to the waiver.



## SECTION 11

### RESOLUTION OF DISPUTES

The parties agree that, upon the request of either party, disputes arising under this Agreement shall be submitted for resolution to a committee consisting of:

(Title) \_\_\_\_\_ DSHS Designee

(Title) \_\_\_\_\_ Tribe's Designee

Designee \_\_\_\_\_ DSHS and Tribe's  
(Title)

A dispute may be referred to the committee only after good faith efforts to resolve the dispute have proven unsuccessful. The decision of the committee shall be binding upon both parties, except that no party shall be bound by any decision that, in its opinion, would place the party in violation of law, nor shall the decision affect in any manner the abilities of either party to utilize the waiver and termination remedies provided for the Part II, Sections 10 and 13 of this Agreement.

## **SECTION 12**

### **AMENDMENTS TO AGREEMENT**

The parties may amend or modify this Agreement at any time upon mutual consent. Amendments shall be effective when approved in the same manner as required for approval of the original Agreement, unless the parties provide otherwise.

## **SECTION 13**

### **TERMINATION OF AGREEMENT**

This Agreement or any part thereof may be revoked by mutual consent or by either party upon ninety (90) days written notice to the other party. The notice shall state the reasons for and the effective date of the revocation.

Prior to notification of revocation, a party considering revocation shall, whenever possible, seek to cooperatively explore with the other party ways in which to avoid revocation.

Prior to the effective date of any revocation, the parties agree to cooperate in assuring that the revocation will not unnecessarily result in a break in service or in disruption of the services provided to Indian children and families.

## **SECTION 14**

### **IMPLEMENTATION PLAN**

The Tribe and DSHS will develop a written plan for implementation of the Agreement. The plan will be attached to the Agreement as an exhibit.

## **SECTION 15**

### **CONFIDENTIALITY OF RECORDS/INFORMATION**

Any disclosure to the Tribe by DSHS of confidential records, documents, or information or any obligation under this Agreement by DSHS to disclose or transmit confidential records, documents, or information to the Tribe or to involve the Tribe in caseplanning activities which necessitate disclosure of confidential information is strictly conditioned upon:

1. Federal or state laws which require or authorize DSHS to disclose confidential information to the Tribe; or
2. Entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and subject matter, which requires or authorizes DSHS to disclose confidential information to the Tribe; or
3. Written consent, by the person who is the subject of the confidential information, authorizing subject of the confidential information, authorizing DSHS to disclose such information to the Tribe. (Whenever necessary for disclosure of information, DSHS will request such written consent.); or
4. A contractual agreement between DSHS and the Tribe whereby CPS, CWS, or other social services are provided by the Tribe and disclosure of confidential information is necessary for provision of services under the contract.

All records, documents, and information of any kind transmitted by DSHS to the Tribe pursuant to the terms of the Agreement and which, but for the existence of one or more of the above-specified conditions, would not otherwise be available to the Tribe, shall be kept confidential by the Tribe and shall not be further disseminated or disclosed by the Tribe unless specifically required or authorized by federal, state, or tribal law or by a court order issued by a federal, state, or tribal court of competent jurisdiction.

All records, documents, and information of any kind transmitted by the Tribe to DSHS pursuant to the terms of the Agreement and which, but for the existence of one or more of the above-specified conditions, would not otherwise be available to DSHS, shall be kept confidential by DSHS and shall not be further disseminated or disclosed by DSHS unless specifically required or authorized by federal, state, or tribal law or by a court order issued by a federal, state, or tribal court of competent jurisdiction.

## **SECTION 16**

### **IDENTIFICATION OF A CHILD AS AN INDIAN**

Prior to filing an involuntary child custody proceeding in superior court and as part of any involvement in securing a voluntary placement of a child, DSHS will seek to discover whether the child is an Indian child of the Tribe or any other tribe. Efforts to discover whether the child is an Indian child will be documented in the case record.

DSHS will consider that it has obtained actual or constructive knowledge that a child may be an Indian child if:

1. Any party to the case, Indian tribe, Indian organization, or public or private agency informs DSHS that the child is an Indian child.
2. DSHS makes diligent inquiry and discovers information which suggests that the child is Indian.
3. Any child involved in a child custody proceeding gives reason to believe that he or she is and Indian.
4. The residence or domicile of the child, his or her biological parents, or Indian custodian is known to be a predominantly Indian community. Whenever residence or domicile in a predominantly Indian community forms the sole basis for considering that a child is an Indian, the child may be treated as a non-Indian if DSHS has verified information that the child is non-Indian.
5. DSHS, upon inquiry, is informed that the child is or has been a ward of the tribal court.

Upon obtaining actual or constructive knowledge that a child may be an Indian child, the provisions of this Agreement and the Act shall be followed unless it is later established with reasonable certainty that the child is not an Indian child.

## **SECTION 17**

### **DETERMINATION OF TRIBAL OR STATE COURT JURISDICTION**

Except in cases of emergency, DSHS will follow the procedures in this section prior to initiating any child custody proceeding in superior court involving an Indian child. In cases of emergency, the procedures set forth in Part IV of this Agreement, regarding emergency foster care placement, shall be followed.

Prior to filing any petition or complaint to initiate an involuntary child custody proceeding in superior court or prior to assisting a parent of Indian custodian consent to the foster care placement or adoption of or termination of parental rights to an Indian child is a ward of a tribal court or whether the child is domiciled or resident on an Indian reservation.

In seeking or determine whether the child is a ward of tribal court, DSHS will contact the Tribe concerning the matter. If the child is domiciled or resident on the Tribe's reservation, the Tribe has exclusive jurisdiction and DSHS will refer the case to the appropriate tribal authorities.

In seeking to determine a child's domicile or residence, DSHS will contact the Tribe concerning the matter. If the child is domiciled or resident on the Tribe's reservation, the Tribe has exclusive jurisdiction and DSHS will refer the case to the appropriate tribal authorities. Whenever DSHS intends to take a position on the domicile or residence issue in conflict with the position of the Tribe, DSHS will so notify the Tribe as soon as possible and in any event, in a time sufficient to enable the Tribe to present its position to the court.

DSHS will keep a record on a case-by-case basis of the inquiries made to determine whether a child is a ward of the tribal court and of the facts considered in reaching a decision that the child is or is not domiciled or resident on an Indian reservation. This record, upon request, will be provided to the Indian child's tribe, parent or Indian custodian and any guardian ad litem appoint to represent the child.

If an Indian child is domiciled or resident within the Tribe's reservation and the child is not a member of or eligible for membership in the Tribe, nothing in this Agreement shall relieve DSHS of any responsibilities to the child's tribe imposed by the Act. If, in such circumstances, the provisions of this Agreement and the provisions of the Act are in conflict, the provisions of the Act shall prevail.

## **SECTION 18**

### **TRANSFER OF JURISDICTION – GROUNDS TO OBJECT**

Whenever a parent or Indian custodian or the Tribe petitions a superior court pursuant to the Act to transfer a foster care placement or termination of parental rights proceeding to the jurisdiction of the Tribe, DSHS may oppose the transfer of jurisdiction only if (1) the Tribe does not have a tribal court, as defined in Part 2, Section 1(17) of this Agreement, (2) the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or witnesses and the tribal court is unable or unwilling to make arrangements for the presentation of evidence in a way that would substantially mitigate any such hardship, (3) there was unreasonable delay in requesting transfer, (4) the Tribe does not intend to go forward with the foster care placement or termination proceeding, or (5) the Tribe lacks jurisdiction in the matter.

Whenever DSHS opposes the transfer of jurisdiction, the basis for the position of DSHS and the facts that support such position shall be documented in writing and made a part of the court record.



## **SECTION 19**

### **QUALIFIED EXPERTS**

The Tribe and DSHS agree to collaborate in a joint effort to establish a mutually acceptable written list of qualified experts in the interracial placement of Indian children. The listing shall identify the experts by name, tribal affiliation, if any, current employment, professional, education and experiential background, areas in which the person is deemed qualified as an expert, whether the person is willing to serve as an expert in such areas and the fees, if any, charged by such person.

The parties agree to employ experts from outside the agreed upon list only when the list does not contain an expert in the area for which an expert is needed, or when the experts on the list are unavailable, or when other factors or circumstances make it unreasonable or burdensome to use a listed expert.

Nothing in this Agreement shall bar DSHS or the Tribe, in a court proceeding, from challenging the competency of a qualified expert.

### **PART III. PROTECTIVE SERVICES**

## **SECTION 1**

### **CHILD ABUSE REPORTS - TRIBAL RESPONSIBILITIES**

Whenever the child abuse reporting requirements of RCW 26.44 apply to circumstances within the boundaries of the Tribe's reservation, the Tribe agrees to comply with such requirements.

## **SECTION 2**

### **ON-RESERVATION CHILD PROTECTION SERVICES**

All Indian children and families residing within the Tribe's reservation are entitled to receive CPS services to the same extent as provided to all other children and families within the state.

DSHS and the Tribe or a tribally designated Indian organization will consult and cooperate in the development and delivery of CPS services. Whenever possible, DSHS and the Tribe or a tribally designated Indian organization will enter into specific written agreements and/or contracts regarding development and delivery of CPS services.

Even if the Tribe or a tribally designated Indian organization and DSHS do not enter into such agreements or contracts, the DSHS administrator responsible for delivery of CPS services within the region where the Tribe's reservation is located will develop, in consultation, a written procedure for CPS service delivery to Indian children and families residing within the reservation.

If the provision of CPS services necessitates court action, the jurisdictional provisions of this Agreement, set forth in Part II, Section 17, shall govern in which court the action shall commence.

### **SECTION 3**

#### **TRIBAL INVOLVEMENT AND UTILIZATION OF INDIAN INTERPRETER**

To reduce the potential for cultural bias in evaluation home and family conditions and making decisions affecting Indian children and families, DSHS will involve the Tribe or tribally designated Indian organizations at the earliest possible point prior to undertaking and carrying out any child abuse or neglect investigation under RCW 26.44 and prior to and in providing protective services intervention with Indian families. If emergency circumstances necessitate investigation or protective services intervention prior to involving the Tribe, DSHS will involve the Tribe as soon as possible following initiation of such investigation or intervention.

In order to enable the Tribe or tribally designated organization to constructively participate in such investigation or protective services, DSHS will furnish the Tribe or its designated organization with all case record material, reports, family social histories, or other documents which formed the basis for the DSHS decision to conduct such investigation or provide protective services. Tribally designated Indian organizations shall be bound to maintain the confidentiality of information received from DSHS to the same extent that the Tribe is bound to maintain confidentiality as specified in Part II, Section 15, of this Agreement.

Whenever possible and practicable, upon receipt of a complaint or referral including matter involving child abuse/neglect regarding an Indian child, the CPS worker will contact a person to serve as an Indian interpreter. An Indian interpreter may be secured by contacting \_\_\_\_\_

\_\_\_\_\_.

The purpose of involving an Indian interpreter is:

A. To assist the CPS worker in

1. Communicating with the Indian family.
2. Avoiding unnecessary protection services intervention or removal of children.
3. Securing emergency placement in a related or another Indian home in accordance with the placement preference requirements of the Tribe or the Act.
4. Complying with the notification requirements of the Act, 25 U.S.C Section 1912(a).
5. Securing reliable identification of the child as an Indian child.

B. To assist the Tribe and its members in

1. Communicating with and securing appropriate services from DSHS and other non-tribal service providing agencies.

If any child abuse or neglect investigation under RCW 26.44 or any protective services intervention necessitates court action, the jurisdictional provisions of this Agreement, set forth in Part II, Section 17, shall govern in which court the action shall commence.

## **SECTION 4**

### **CHILD PRTECTIVE SERVICES STAFF ASSIGNMENTS**

DSHS will seek to involve the Tribe in the selection of DSHS caseworkers or social workers to be assigned to cases involving Indian children, so that workers will be assigned who are sensitive to cultural and tribal issues.

Whenever the Tribe is concerned that the worker assigned to a case involving an Indian child is not sensitive to the cultural and tribal issues involved in a case, the Tribe will discuss its concerns with the worker and supervisor. If appropriate, DSHS will, with the assistance of the Tribe, provide training and direction designed to assist the worker to understand the importance of cultural and tribal issues. DSHS will also take additional action appropriate to the situation, which may include reassignment of the case (consistent with the Union-Management Agreement and applicable personnel rules).

## **SECTION 5**

### **DSHS RECRUITMENT OF INDIAN STAFF**

DSHS will seek to recruit and hire Indian professional staff proportional to the local Indian service population.



## **SECTION 6**

### **DSHS SERVICES IN TRIBAL COURT MATTERS WHERE DSHS NOT A PARTY**

DSHS agrees to assist in the implementation of tribal court orders regarding services and placement where requested by the Tribe. Such implementation may include assumption by DSHS of the care, custody, and supervision of a child pursuant to tribal court order. If DSHS is unable to implement the order, DSHS agrees to notify the tribal court in writing as soon as possible. If the Tribe wishes to request DSHS assistance in implementing caseplan services and placement, DSHS will be notified of any hearing to consider court approval of such caseplan, and DSHS will be given an opportunity to address the propriety of the caseplan in writing or through testimony.

## **PART IV. EMERGENCY FOSTER CARE PLACEMENT**

## SECTION 1

### EMERGENCY FOSTER CARE PLACEMENT

#### A. Indian Child – Ward of Tribal Court/Domiciled or resident on Tribe's Reservation.

In general, if an Indian child is a ward of the tribal court or is domiciled or resident on the Tribe's reservation, DSHS or the superior court may not exercise any authority to place the child in foster care, unless authorized to do so under the laws of the Tribe.

However, if an Indian child, who is a ward of the tribal court or who is domiciled or resident on the Tribe's reservation, is located off the reservation, DSHS may take steps to obtain a superior court order authorizing an emergency placement of the child in foster care in order to prevent imminent physical damage or harm to the child, including sexual abuse.

Following placement, DSHS will undertake "reasonable efforts" to make it possible to return the child to its home and shall take necessary steps to insure that the emergency foster care placement of the child terminates immediately when such placement is no longer necessary to prevent imminent physical damage or harm to the child, including sexual abuse. Upon termination of the placement, the child shall immediately be returned to his/her parent(s) or Indian custodian(s).

Whenever an Indian child is placed in emergency foster care, DSHS will seek tribal court approval of such placement at the earliest possible time but in no event shall an emergency foster care placement extend for a period longer than 72 hours excluding Saturdays, Sundays and holidays without an order of the tribal court approving such placement, or if the tribal court is unable to issue an order within the 72 hour period, a superior court order approving such placement. DSHS will immediately seek dismissal of the superior court proceeding as soon as the tribal court exercises jurisdiction over the child.

#### B. Indian Child – Not Ward of Tribal Court/Not Domiciled Or Resident on Tribe's Reservation.

If an Indian child is not a ward of the tribal court and is not domiciled or resident on the Tribe's reservation, DSHS may take steps to obtain a superior court order authorizing placement of the child in emergency foster care. DSHS will not take steps to obtain a superior court order authorizing an emergency placement of the

Indian child in foster care unless such placement is necessary to prevent imminent physical damage or harm to the child, including sexual abuse.

Following placement, DSHS will undertake “reasonable efforts” to make it possible to return the child to its home and shall take necessary steps to insure that the emergency foster care placement of the child terminates immediately when such placement is no longer necessary to prevent imminent physical damage or harm to the child, including sexual abuse. Upon termination of the placement, the child shall immediately be returned to his/her parent(s) or Indian custodian(s).

Whenever an Indian child is placed in emergency foster care, DSHS will obtain judicial approval of such placement at the earliest possible time but in no event shall an emergency foster care placement extend for a period longer than 72 hours excluding Saturday s, Sunday s and holidays unless the child is transferred to the jurisdiction of the Tribe and tribal court orders a longer placement period, or unless DSHS obtains a superior court order approving a longer period of placement.

## **SECTION 2**

### **EMERGENCY FOSTER CARE PLACEMENT BEYOND 72 HOURS**

Whenever DSHS concludes that emergency foster care is necessary for a period longer than 72 hours, DSHS will immediately seek a superior court order transferring the child to the jurisdiction of the Tribe unless DSHS reaches an agreement with the representatives of the Tribe's social services program that under the circumstances of the particular case the matter would more appropriately be heard in superior court. Such an agreement will not constitute a waiver of the Tribe's right to subsequently request transfer of the proceeding to tribal court.

If DSHS concludes that emergency foster care is necessary for a period longer than 72 hours and if the case has not previously been transferred to tribal court, a shelter care hearing will be held in superior court in accordance with RCW 13.34.060. If a qualified expert is available and is sufficiently knowledgeable regarding the facts of the case to have reached an informed opinion regarding the need for continued foster care placement of the child, DSHS will present the testimony of such expert at the initial shelter care hearing.

If the testimony of an expert witness is not presented at the initial shelter care hearing, DSHS will take immediate steps to involve the Tribe and a qualified expert in the case. Thereafter, unless DSHS has previously returned the child to the custody of the parent(s) or Indian custodian(s), a subsequent shelter care hearing to determine whether foster care placement should be further extended will be held within thirty (30) days following entry of a foster care placement order at the initial shelter care hearing. If DSHS requests continued foster care at the subsequent shelter care hearing, DSHS will present the testimony of a qualified expert witness in support of the request for continued foster care placement.

If the court orders continued foster care placement following a shelter care hearing, DSHS will request the court to set a fact finding hearing as soon as possible. If at any time prior to the fact finding hearing, DSHS determines that foster care placement is no longer necessary to prevent imminent physical damage or harm to the child, including sexual abuse, DSHS shall immediately take necessary action including obtaining any necessary court orders, to return the child to the custody of his/her parent or Indian custodian.

## **SECTION 3**

### **CONTENT OF EMERGENCY FOSTER CARE PLACEMENT AFFIDAVITS**

Whenever DSHS requests a superior court order for the emergency foster care placement of an Indian child, the request shall be accompanied by a verified affidavit which shall contain the following information:

1. The name, date of birth and the last known address of the Indian child.
2. The name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation shall be included of the efforts made to locate them.
3. The tribal affiliation of the child and of the parents and/or Indian custodians.
4. A statement as to whether the Indian child's residence or domicile is on the Tribe's reservation. The Tribe's position as to the child's residence or domicile, if known, will be included in such statement. If there is insufficient information available at the time of filing for a determination regarding the child's residence or domicile, a statement to that effect will be included.
5. A statement as to whether the Indian child is a ward of any tribal court. If there is insufficient information available at the time of filing for a determination regarding the child's tribal wardship status, a statement to that effect will be included.
6. A specific and detailed account of the circumstances that led DSHS to seek court-ordered emergency foster care.
7. A statement as to why DSHS has not transferred the child to the jurisdiction of the Tribe, including a statement on whether the Tribe has concurred in the superior court petition and the believed basis for any such tribal concurrence or non-concurrence.
8. A statement of the "reasonable efforts" if any, taken to prevent emergency foster care placement.

9. A statement of the specific actions that have been take or, if known, will be taken to assist the parents or Indian custodians to obtain the return of the child to their custody.



## **SECTION 4.**

### **NOTICE OF EMERGENCY FOSTER CARE PLACEMENT**

As soon as possible following any action by DSHS to place any Indian child, including any Indian child who is a ward of a tribal court or resident or domiciled on the Tribe's reservation, in emergency foster care, DSHS will notify, by telephone and in writing, the Contact Person(s) designated in the Agreement and representatives of the Tribe's social services program of the actions taken or to be taken. Whenever possible, such notifications should be provided prior to the placement of the child in emergency foster care and, in any event, shall be provided prior to the initial shelter care hearing.

Concurrently with filing a request in superior court for the emergency foster care placement of an Indian child, DSHS will personally serve, if possible, or send a copy of the court documents and any scheduling orders or notices to the child's parents, the child's Indian custodians, if any, and the Tribe.

Notice to the Tribe shall be sent to the Contact Person(s) designated in the Agreement and, if different, to the Tribe's designated agent as published in the Federal Register. If the child is believed not to be a member of any tribe and may be eligible for membership in more than one tribe, service of the petition and other notices shall be sent to each such tribe

If the identity or location of the parent or Indian custodian or the tribe cannot be determined, such notice shall be given to the Bureau of Indian Affairs Portland Area Director (and to the BIA Agency Superintendent of such other Area Director of the Bureau and the LICWAC, if any, likely to be more proximate to the parent, Indian custodian or tribe). The notice to the BIA or LICWAC shall include a copy of the notice required to be sent to the parent, Indian custodian or tribe and all information pertaining to the background of the Indian child and his/her family that may assist in identifying the child's tribe.

In addition to the petition and scheduling orders of notices, the child's parents, Indian custodians, if any, and the Tribe, shall be served with a notice that includes:

1. The name of the child.
2. The child's tribal affiliation, if known.
3. The child's residence address, if known.

4. The child's domicile, if known.

5. The name of the parents or Indian custodians of the child together with their residence address and domicile, if known.
6. The name of the petitioner, the petitioner's address, and the name and address of the petitioner's attorney.
7. A statement of the right of the parent or Indian custodian and the Tribe to intervene in the superior court proceeding.
8. A statement of the right of the parent or Indian custodian and the Tribe to request that the superior court proceeding be transferred to the tribal court.
9. A statement that if the parent or Indian custodian is unable to afford counsel, the superior court will appoint counsel to represent him/her, provided that a request is made for such appointment and the court determines that the person making the request is indigent.
10. The location, mailing address and telephone number of the clerk of the superior court before which the proceeding is pending and the name and telephone number of the judge of the superior court determines that the person making the request is indigent.
11. The potential legal consequences of an adjudication of the complaint or petition on the parents' or Indian custodians' custodial rights (expressed in simple English, in upper-case and bold face) and the potential legal consequences for failing to respond to the complaint or petition.
12. A statement as to whether a written response to the complaint or petition must be filed and, if so, the date that the response must be received by the superior court. The statement shall include an explanation of the legal consequences of failure to file a written response.
13. A statement of the date, time and place of the next scheduled proceeding, and the legal consequences of failure to so appear.
14. A statement of the right of each part to examine all reports or other documents filed with the superior court upon which and decision with respect to the complaint or petition may be based.

## **SECTION 5**

### **INVOLVEMENT OF TRIBAL SOCIAL SERVICES**

As soon as possible following DSHS knowledge of the need for an emergency foster care placement of an Indian child, DSHS will actively involve the Tribe's social service program in all matters pertaining to the emergency foster care placement

## **SECTION 6**

### **EMERGENCY FOSTER CARE PLACEMENT PREFERENCES**

Generally, unless the tribe agrees to change in the foster care placement preferences provided in the Act or agrees to waive the placement preferences in a particular care, DSHS, for emergency foster care placement purposes, will follow the foster care placement preferences established in the Act

The Tribe recognizes that prior to obtaining a court order for the emergency placement of an Indian child, circumstances surrounding the need for emergency placement may not immediately lend themselves to placement of the child using the placement preferences established in the Act. In such circumstances, DSHS may make an emergency foster care placement without using the preferences established in the Act provided that DSHS , in cooperation with the Tribe's social services program, has made diligent and documented efforts to place the child in an emergency foster care placement consistent with preferences in the Act. Whenever an Indian child is not placed according to the preferences, DSHS will continue efforts to place the child within the preferences, as specified in Part IX, Section 1 of the agreement.

## **SECTION 7**

### **DSHS POST-PLACEMENT SERVICES**

Once an Indian child has been placed in emergency foster care, DSHS, in cooperation with the Tribe's social services program, will actively provide reasonably available remedial and rehabilitative programs designed to return the child to the custody of the parents or Indian custodians. These programs shall focus on eliminating any risk to the child of imminent physical harm if returned to the custody of the parents or Indian custodians.

**PART V. INVOLUTARY FOSTER CARE PLACEMENT OR  
TERMINATION OF PARENTAL RIGHTS**

## **SECTION 1**

### **SERVICES FOR INDIAN FAMILIES PRIOR TO COURT ACTION**

Prior to filing an action in superior court for the involuntary foster care placement of an Indian child or for involuntary termination of parental rights of a parent of an Indian child, DSHS will provide social services to the family for protection of the child only when:

1. the circumstances of the family, viewed in light of the prevailing social and cultural conditions and way of life of the Indian community, require the provision of social services for the protection of the child and in support of the parent-child relationship or Indian custodian-child relationship, and
2. in consultation with the Tribe's social services program, the services actively provided by DSHS are of a remedial nature designed to rehabilitate and prevent the break of the family.

The remedial and rehabilitative services to be provided shall be based on a plan designed to effectively address and eliminate problems destructive to the family. The plan shall be designed to insure that responsible efforts are made to prevent or eliminate the need for removal of the child from the family home. The plan shall be formulated with the direct collaboration of the parents or Indian custodians, the child, if of sufficient age, grandparents, when appropriate, and the Tribe. Whenever possible, formulation of the plan shall involve a qualified expert(s)

The plans shall be designed in a way that takes into account the prevailing social and cultural conditions in the child's Indian community. The plan will encourage maintenance of an ongoing familial relationship between the parent or Indian custodian and the child, as well as between the child, its siblings and other members of the child's extended family throughout time that DSHS is engaged in efforts to prevent family breakup. The plan will encourage maintenance of the Indian child in his/her own familial residence.

Implementations of the plan will stress the use and involvement, where available, of community services and resources specifically for Indian families. These include the extended family, tribal social



services and other programs, tribal organization programs aimed at preventing family breakup, traditional Indian therapy administered by traditional practitioners, where available and appropriate, individual Indian caregivers who have skills to help the family, and the resources of the Bureau of Indian Affairs, and Indian health Service. Whenever possible, implementation will also involve qualified expert(s)

## **SECTION 2**

### **PETITION TO SUPERIOR COURT – PRECONDCTIONS AND GROUNDS FOR INVOLUNTARY PETITION FOR FOSTER CARE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS.**

DSHS will petition the superior court for an involuntary foster care placement or termination of parental rights only after it has undertaken active efforts, in accordance with Part V, Section 1 of this Agreement (Services to Indian families Prior to Court Action), to prevent breakup of the Indian family and the efforts have proved unsuccessful. Prior to filing such petition, DSHS will consult with the Tribe and provide the Tribe with any records and documents that support the decision to petition the superior court.

Prior to filing a petition, DSHS will seek to formulate with the Tribe a mutually acceptable course of action in the best interests of the child and will make every effort to agree to family service plans and legal arrangements designed to eliminate the need for filing a petition in superior court. DSHS will consult with the Tribe to determine whether the Tribe wishes to assert jurisdiction over the matter.

DSHS will not petition the superior court for a foster care placement of an Indian child or for termination or severance of the relationship between an Indian child and its parents whenever the only grounds for such a petition are evidence of community or familial poverty, crowded or inadequate housing, or alleged alcohol abuse or other nonconforming social behaviors on the part of a parent or Indian custodian. In initiating a petition, these factors may be considered only when it can be demonstrated that such factors are directly connected to evidence of serious emotional or physical harm to the child.

### **Section 3**

#### **PETITION TO SUPERIOR COURT – CONTENT OF INVOLUNTARY PETITION FOR FOSTER CARE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS**

Whenever DSHS petitions a superior court for the involuntary foster care placement of an Indian child, or to terminate or sever the relationship between an Indian child and his\her parent(s), the petition or complaint will be verified and will contain the following information:

1. The name, date of birth and last known address of the Indian child.
2. The name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation shall be included of the efforts made to locate them.
3. The tribal affiliation of the child and of the parents and\or Indian custodians. If the tribal affiliation has not been determined, a statement shall be included describing the efforts made to determine whether the child is an Indian child and to identify the tribal affiliation of the child and of the parents and\or Indian custodians.
4. A statement as to whether the Indian child's residence or domicile is on the Tribe's reservation. If there is insufficient information for a determination regarding the child's residence or domicile, a statement to that effect shall be included.
5. A statement as to whether the Indian child is a ward of the tribal court. If there is insufficient information available at the time of filing for a determination regarding the tribal wardship status of the child, a statement to that effect shall be included.

6. An identification of any tribal court orders affecting the custody of the child to which the superior court may be required to accord full faith and credit. A copy of each such order shall be attached to the petition or complaint.

7. A specific and detailed account of the circumstances that led DSHS to petition the superior court.

8. A statement, with documentation attached to the petition or complaint, of the specific active efforts made by DSHS to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family. The statement shall also indicate whether these efforts have proved unsuccessful and state the reasons for any such lack of success.

## **SECTION 4**

### **PETITION TO SUPERIOR COURT – NOTICE OF INVOLUNTARY PROCEEDING**

Whenever an Indian child is the subject of an involuntary child custody proceeding in superior court, DSHS, concurrently with filing a complaint or petition with the court, will send a copy of the complaint or petition and any scheduling orders or notices to the child's parents, the child's Indian custodians, if any, and the Tribe.

Notice to the Tribe shall be sent to the Contact Person(s) designated in this Agreement and, if different, to the Tribe's designated agent as published in the Federal Register. If the child is not a member of any tribe but may be eligible for membership in more than one tribe, service of the complaint or petition and other notices shall be sent to each such tribe.

If the identity or location of the parent or Indian custodian or the tribe cannot be determined, such notice must be given to the BIA Portland Area Director (and to the DIA Agency Superintendent or such other Area Director of the DIA and the LICWAC, if any, likely to be most proximate to the parent, Indian custodian or tribe). The notice shall include a copy of the notice required to be sent to the parent, Indian custodian or tribe and all information pertaining to the background of the Indian child and his/her family that may assist in identifying the child's tribe.

Under the Act, the BIA has fifteen (15) Days after receipt to provide notice to the parent or Indian custodian and the tribe. If notice is provided directly to the parent or Indian custodian, the Act provides that no foster care placement or termination of parental rights proceedings may be held until at least ten (10) days after receipt of such notice. In cases where notice is to be provided by the appropriate where notice is to be provided by the appropriate BIA official, DSHS agrees not to proceed with a foster care placement or termination of parental rights action in court until at least twenty (20) days after receipt of notice by the parent or Indian custodian and the Tribe, unless the proceeding is related to emergency foster care placement. (See the provisions regarding notice of emergency foster care placement, set forth in Part IV, Section 4 of this Agreement.) Under the Act, the parent or Indian custodian or the tribe, upon request, must be granted up to twenty (20) additional days after receipt of notice, to prepare for a foster care placement or termination of parental rights action.

In addition to the petition or complaint and scheduling orders or notices, the child's parents, Indian custodians, if any, and the Tribe, will be served with a notice that includes:

1. The name of the child.
2. The child's tribal affiliation, if known.
3. The child's residence address, if known
4. The child's domicile, if know
5. The names of the parents or Indian custodians of the child together with their residence address and domicile, if known.
6. The name of the petitioner, the petitioner's address, and the mane and address of the petitioner's attorney.
7. A statement of the right of the parent or Indian custodian and the Tribal to intervene in the superior court proceedings.
8. A statement of the right of the parent or Indian custodian and the Tribe to request that the superior court proceeding be transferred to the tribal court.
9. A statement that if the parent to Indian custodian is unable to afford counsel, the superior court will appoint counsel to represent him\her, provided that a request is made for such appointment and the court determines that the person making the request is indigent.
10. A statement of the right of the parent or Indian custodian and the Tribe to have, upon request to the superior court, at least twenty additional days, from the date of receipt of notice of the proceeding, to prepare for the proceeding.
11. The location, mailing address and telephone number of the clerk of the superior court before which the proceeding is pending and the mane and telephone number of the judge of the superior court assigned to the case, if known.
12. The potential legal consequences of an adjudication of the complaint or petition on the parents' or Indian custodians' custodial rights (expressed in simple English, in upper-case and

bold face) and the potential legal consequences for failing to respond to the complaint or petition.

13. A statement as to whether a written response to the complaint or petition must be received by the superior court. The statement shall include an explanation of the legal consequences of failure to file a written response.

14. A statement of the date, time and place of the next scheduled proceeding in the matter, whether those notified must appear in person at such proceeding, and the legal consequences of failure to so appear.

15. A statement of the right of each party to examine all reports or other documents filed with the superior court upon which any decision with respect to the complaint or petition may be based.



## **SECTION 5**

### **EXAMINATION OF REPORTS AND OTHER DOCUMENTS – COURT ACTION**

At the commencement of any proceeding for the foster care placement of or termination of parental rights to an Indian child, DSHS, as part of the notice required to be sent under this Agreement to the parent (s), Indian custodian (s) and the Tribe, will inform those notified that, upon request, DSHS will furnish all case record material, reports or other documents which formed the basis for the decision to petition the court, as well as all reports or other documents which DSHS intends to provide the court in support of the petition. In addition, DSHS will inform those notified of their right to examine and receive copies of such other documents as may assist the Tribe in deciding whether to petition the superior court for a transfer of jurisdiction to the tribal court or to intervene in the superior court proceeding.

The Tribe will maintain the confidentiality of any documents received from DSHS, as specified in Part II, Section 15, of this Agreement.

## **SECTION 6**

### **TRANSFER OF JURISDICTION – PAYMENTS OF COSTS**

Whenever DSHS initiates an involuntary foster care placement or termination of parental rights proceeding in superior court and a request for transfer of the proceeding to the jurisdiction of the Tribe is subsequently granted, DSHS will pay the costs of transporting the child to the Tribe's reservation, to the extent that the parents are unable to do so. Provided that the child remains eligible for foster care payment, DSHS will also pay the costs of any out-of-home care of such child. Payment will be made in accordance with Part IX, Section 2 of this Agreement (Foster Care Payment for Indian Children).

## **SECTION 7**

### **DSHS SOCIAL STUDY (RCW 13.34.120)**

Whenever DSHS undertakes to prepare a social study or a predisposition study pursuant to RCW 13.34.120, DSHS will invite the Tribe and a qualified expert(s) to play an active role in the preparation of such study. The study will describe in detail the role of the Tribe and will fully state the Tribe's recommendations and such other information provided by the Tribe in accordance with RCW 13.34.120.

If the Tribe declines participation, DSHS agrees to involve a qualified expert in the preparation of said study. An Indian interpreter may also be engaged to assist in the study.

Upon filing with the court DSHS will send the Tribe a copy of the social study or, if necessary, will request the court's permission to provide the Tribe with a copy.

DSHS agrees to cooperate with and, in its report to the court, to follow the recommendations of the Tribe, the qualified expert or the Indian interpreter as the case may be unless there are compelling reasons not to do so. Such reasons must be related to: 1) the child's health and safety, 2) the unavailability of funds to carry out the Tribe's recommendations or 3) lack of legal authority to carry out the Tribe's recommendations. Whenever DSHS determines not to follow the recommendations of the Tribe, the qualified expert, or the Indian interpreter, DSHS will set forth such recommendations in its report to the court and the reasons for its determination not to follow these recommendations.

## **SECTION 8**

### **NOTICE TO EXTENDED FAMILY OF INVOLUNTARY REMOVAL OR TERMINATION OF PARENTAL RIGHTS**

Whenever an order of the superior court results in the involuntary removal of an Indian child from its parents or Indian custodians for placement in foster care or in the involuntary termination of the parent-child relationship, DSHS will forthwith notify extended family members of the circumstances and of their legal right to be preferentially considered for the foster care, productive placement, or adoptive placement of the child. The notice will include information on the next scheduled court proceedings affecting the custody of the child and on the steps, if any, that the extended family member must take in order to be properly considered as a placement for the child. The notice shall be sent by certified mail return receipt requested. The notice shall be sent immediately following entry of the court order or at such time as the identity of extended family members becomes known. In carrying out the notice requirements of this section, the parties agree that DSHS will notify only those extended family members whose identities and addresses are known or, through the assistance of the Tribe, the BIA or other appropriate sources, can be reasonably ascertained. Upon the request of DSHS, the Tribe will assist whenever possible in providing the notice required in this section.

Where a parent or Indian custodian objects to notification of an extended family member, DSHS, in consultation with the Tribe, will consider the objection. If the objection is based upon the ground that the child would be harmed by contact with the extended family member, notice to that person will not be given as required in this section if DSHS, in consultation with the Tribe, determines that the objection is reasonably based, if the objection is based upon the parent's or Indian custodian's desire for anonymity or upon other consideration, DSHS will consult with the Tribe and if it is determined that notification of the extended family member would serve the Indian child's best interests, DSHS will take steps to provide notification as provided herein, including taking necessary steps to obtain court orders authorizing notification.

## **SECTION 9**

### **DSHS POST-PLACEMENT SERVICES – NO TERMINATION OF PARENTAL RIGHTS**

Once an Indian child has been involuntarily placed in foster care in circumstances where parental rights have not been terminated, DSHS, in cooperation with the Tribe's social services program, will actively provide reasonably available remedial and rehabilitative programs designed to return the child to the custody of the parent or Indian custodian.

The remedial and rehabilitative services to be provided will be based on a plan designed to effectively address and eliminate problems destructive to the family. At a minimum, the plan will include services for the family ordered by the superior court or by the tribal court, if such services would be provided if ordered by a superior court, as well as any other services DSHS is able and willing to provide. The plan will be formulated with the direct collaboration of the parents or Indian custodians, the child, if of sufficient age, grandparents, when appropriate, and the Tribe. Whenever possible, formulation of the plan will involve a qualified expert. The plan will serve as the plan required by RCW 13.34.130(2).

The plan will be designed in a way that takes into account the prevailing social and cultural conditions in the child's Indian community. The plan shall encourage maintenance of an ongoing familial relationship between the parents or Indian custodians and the child, as well as between the child, its siblings, and other members of the child's extended family throughout the time that DSHS is engaged in efforts to prevent family breakup.

The plan shall encourage maximum visitation between the parents or Indian custodians and the child, as well as between the child, its siblings, and other members of the child's extended family. Whenever possible, visitation shall occur in the home of the parent or Indian custodian, the home of other family members or some other non-institutional setting that permits the child and those with whom the child is visiting to have a natural and unsupervised interaction. If parental indigency precludes frequent visitation, DSHS will provide, subject to availability of funds, financial or other assistance so as to enable the parent to maintain frequent visitation.

Implementation of the plan will stress the use and involvement, where available, of community services and resources specifically for Indian families. These include the extended family, tribal social services and other programs, tribal

organization programs aimed at preventing family breakup, traditional practitioners, where available and appropriate, individual Indian caregivers who have skills to help the family, and the resources of the Bureau of Indian Affairs and Indian Health Service. Whenever possible, implementation will also involve a qualified expert(s).

In addition, DSHS, in cooperation with the Tribe's social services program, will assist the child in adjusting emotionally and psychologically to the foster care placement. As may be necessary, this assistance shall include a qualified expert and such other expertise is interracial, DSHS, when necessary, will provide an expert in the interracial placement of Indian children to assist the child in dealing with or overcoming adjustment problems unique to such interracial placements.

DSHS, in cooperation with the Tribe's social services program, will also<sup>9</sup> provide the foster care home or facility with information on the background and special needs, if any, of the child. Where necessary, the foster care home or facility will be instructed in foster care parenting skills, in how best to meet the child's special needs and in how to best assist the child's adjustment to foster care. When the foster care placement is interracial, the foster care home or facility will be instructed by a qualified expert(s) in the placement of Indian children on the special developmental and social problems common in such placements and in how best to handle such problems.

During the Indian child's placement in foster care, DSHS, in cooperation with the Tribe's social services program and upon request of the foster care home or facility, the child, if of sufficient age, or as necessary, shall provide the child and the foster care home or facility with help in resolving socio-psychological problems related to the foster care placement. The foster care home or facility and the child, if of sufficient age, will be informed of this service.

DSHS, in cooperation with the Tribe's social services program, will regularly monitor the foster care home or facility for overall stability and to assure that the child is not the object of abuse or neglect, that the child's special needs are addressed and that the child's relationship with its parents, siblings, extended family members and the Tribe is encouraged.

## **SECTION 10**

### **JUDICIAL REVIEW OF INVOLUNTARY FOSTER CARE PLACEMENT**

DSHS will notify the Tribe and the parents of impending RCW 13.34.130(3) foster care placement reviews in superior court involving Indian children. Notice shall be provided at least 15 days prior to the scheduled review date.

Prior to the judicial review of the foster care placement of an Indian child, DSHS will invite the Tribe to jointly prepare a report for the court describing the efforts made to correct the conditions that led to the removal and providing information on the factors specified in RCW 13.34.130(3) (b). The parties may engage the services of a qualified expert to assist in the preparation of the report. In the event that DSHS and the Tribe differ on assessing the factors specified in RCW 13.34.130(3) (b), the report shall detail the difference of opinion and the reason for it.

If the Tribe declines participation, DSHS will involve a qualified expert in the preparation of the report. An Indian interpreter may also be engaged to assist in the preparation of the report.

In its report to the court, DSHS agrees to follow the recommendations of the Tribe, the qualified expert or the Indian interpreter as the case may be unless there are compelling reasons not to do so. Such reasons must be related to 1) the child's health and safety or 2) the unavailability of funds to carry out the Tribe's recommendations or 3) lack of legal authority to carry out the Tribe's recommendations. Whenever DSHS determines not to follow the recommendations of the Tribe, the qualified expert, or the Indian interpreter, DSHS will set forth such recommendations in its report to the court and the reasons for its determination not to follow these recommendations.

## **SECTION 11**

### **TERMINATION OF INVOLUNTARY FOSTER CARE PLACEMENT-NOTICE**

Whenever an involuntary foster care placement is terminated and the child is returned to the custody of a parent or Indian custodian, DSHS will so notify any other parent or Indian custodian of the child, the Tribe and any other party to the involuntary foster care placement proceeding. Such notification will be in writing and will specify the name and address of the person to whom the child has been returned.



## **SECTION 12**

### **DSHS POST-PLACEMENT SERVICES WHEN PARENTAL RIGHTS TERMINATED**

Whenever an Indian child is in foster care or a preadoptive placement following an involuntary termination of parental rights, DSHS, in cooperation with the Tribe's social services program, will develop a plan for the child's future care, custody and control consistent with the best interests of the child, any special needs of the child, and the culture and customs of the child's Indian community. The plan will be formulated with the direct collaboration of the child, if of sufficient age, and, whenever possible, other members of the child's extended family. Formulation of the plan will involve a qualified expert(s). The principal focus of the plan will be to identify the child including a determination as to whether long-term foster care, guardianship, or adoption is most suitable for the child.

The plan will encourage maintenance of an outgoing familial relationship between the child, its siblings and other members of the child's extended family.

In addition, DSHS, in cooperation with the Tribe's social services program, will assist the child and the natural parent(s) in adjusting emotionally and psychologically to the termination of parental rights and to the foster care or preadoptive placement. This assistance will involve a qualified expert and such other expertise as may be appropriate. When the foster care or preadoptive placement is interracial, DSHS, when necessary, will provide a qualified expert in the interracial placement of Indian children to assist the child in dealing with or overcoming adjustment problems unique to such interracial placements.

DSHS, in cooperation with the Tribe's social services program, will also provide the foster care home or facility or preadoptive home with information on the background and special needs, if any, of the child. Where necessary, the foster care home or facility or preadoptive home shall be instructed in foster care parenting skills, in how best to meet the child's needs and in how to assist the child's best adjustment to foster care or preadoptive placement. When the foster care or preadoptive placement is interracial, the foster care home or facility or preadoptive home shall be instructed by a qualified expert(s) in the interracial placement of Indian children on the special developmental and social problems common in such placements and in how best to handle such problems.

During the Indian child's placement in foster care or in a preadoptive placement, DSHS, in cooperation with the Tribe's social services program and upon request

of the foster care home or facility or preadoptive home, the child, if of sufficient age, or as necessary, will provide the child and the foster care home in resolving socio-psychological problems related to the foster care or preadoptive placement. The foster care home or facility or preadoptive home and the child, when of sufficient age, will be informed of this service.

DSHS, in cooperation with the Tribe's social services program, will regularly monitor the foster care home or facility or preadoptive home for overall suitability and to assure that the child is not the object of abuse or neglect, that the child's special needs are addressed, and that the child's relationship with its siblings, biological family and the Tribe is encouraged.

Whenever an Indian child eligible for membership in the Tribe is in foster care or preadoptive placement following an involuntary termination of parental rights, DSHS will seek to secure tribal membership for the child at the earliest possible time following the foster care placement or preadoptive placement.

## **SECTION 13**

### **DSHS REVIEW OF FOSTER CARE AND PREADOPTIVE PLACEMENT**

See Miscellaneous Provisions, Part X, Section 1.

## **PART VI. VOLUNTARY FOSTER CARE PLACEMENT**

## SECTION 1

### VOLUNTARY FOSTER CARE PLACEMENT

#### A. Indian Child – Ward of Tribal Court/Domiciled Or Resident on Tribe’s Reservation

Whenever a parent or Indian custodian seeks to voluntarily placement place in foster care an Indian child who is a ward of the tribal court or who is domiciled or resident on the Tribe’s reservation, DSHS will inform the parent or Indian custodian that the Tribe has exclusive jurisdiction to approve such placements. DSHS, cooperation with the Tribe’s social services program, will assist the parent or Indian custodian to place the child in foster care or make such other arrangement as may be appropriate under the circumstances.

#### B. Indian Child – Not Ward of Tribal Court/Not Domiciled Or Resident on Tribe’s Reservation

If a parent or Indian custodian seeks to voluntarily place an Indian child in foster care, DSHS will advise the individuals involved of the provisions of the Act governing such placements, including the required placement preferences and notices. DSHS will also advise the parent that the child may not be placed in foster care unless the consent to foster care placement is validating by a tribal or superior court of competent jurisdiction. If consistent with the practice and procedures of the tribal court, DSHS will encourage the parent or Indian custodian to execute and consent to voluntary foster care placement before a judge of the tribal court.

Whenever a parent or Indian custodian consents to voluntary foster care placement, DSHS will encourage the consenting parent or Indian custodian to contact as Indian interpreter or a representative of the Tribe’s social services program to participate in order to assure that the consent is voluntary and does not involve fraud or duress. The efforts of DSHS to secure the involvement of an Indian interpreter or a representative of the Tribe’s social services program will be documented. Upon request, the documentation shall be provided to the Tribe.

The parent’s consent will be in writing, and the consent form will explain plain language that the parent may revoke the consent to placement at any time and that, upon revocation, the child must be returned to the parent or Indian custodian unless a court order continuing foster care placement has previously been entered in accordance with 25 U.S.C. Section 1912 or unless the return of custody would likely cause an emergency resulting in imminent physical harm to the child.

## **SECTION 2**

### **TRIBAL SOCIAL SERVICES INVOLVEMENT**

Prior to accepting a voluntary consent to foster care placement DSHS will encourage to parent or Indian custodian to contact the Tribal regarding available services to assist the parent or Indian custodian to retain custody of the child or to further the parent child relationship during placement. DSHS will document its efforts to have the parent or Indian custodian contact the Tribe concerning available services. If the parent or Indian custodian is referred by DSHS to an identified individual within the Tribe for provision of social services, the date of the referral and the identified of the individual to whom the referral was made will be included in the case documentation. Upon request, the documentation will be made available to the Tribe.

## **SECTION 3**

### **EXECUTION OF CONSENT TO FOSTER CARE PLACEMENT**

Prior to having a parent or Indian custodian execute consent to foster care placement of an Indian child, DSHS, utilizing content of the consent to the parent or Indian custodian. In every case, a parent or Indian custodian will not be permitted to sign the consent until he/she has read the consent or, in cases where there is doubt regarding the person's ability to read and understand the consent, has the consent read to him/her.

A copy of the consent will be provided to the consenting parent or Indian custodian.

## **SECTION 4**

### **CONTENT OF CONSENT TO FOSTER CARE PLACEMENT**

A voluntary consent to foster care placement of an Indian child will contain the following information.:

1. The same, date of birth and last known address of the Indian child
  2. The name and last known address of the child's parents and Indian custodians, if any
  3. The tribal affiliation, if known of the child and the parents and/or Indian custodians.
  4. A statement affirming that the consent was not given prior to or within (10) days after the child's birth.
  5. A statement of the reason for the foster care placement
  6. A statement acknowledging the understanding of the parent or Indian custodian that the consent, in order to be valid, must be approved in a court proceeding at which the parent or Indian custodian personally appears.
  7. A statement acknowledging the understanding of the parent or Indian custodian that he/she has the right to obtain the advice and representation of counsel with respect to the foster care placement.



8. A statement acknowledging the understanding of the parent or Indian custodian that he/she has the right to withdraw consent to the foster care placement at any time and, upon such withdrawal, to have the child promptly returned to the custody of the parent or Indian custodian unless a court order for foster placement has previously been entered in accordance with 25 U.S.C. 1912 or unless the return of custody would likely cause an emergency resulting in imminent physical harm to the child

9. A statement acknowledging the understanding of the parent or Indian custodian that a copy of the consent is to be sent to the tribe and that the parent or Indian custodian has been advised of the provisions of the act governing voluntary foster care placement.

10. The DSHS office and worker involved in the preparation of the consent and the date of the consent.

## **SECTION 5**

### **PETITION TO SUPERIOR COURT- CONTENT OF PETITION FOR VALIDATION OF CONSENT TO FOSTER CARE PLACEMENT**

Whenever DSHS petition a superior court for validation of a voluntary consent to foster care placement of an Indian child, the petition will be verified and will contain the following information.

1. The name, date of birth and last known address of the Indian child.
2. The same and address of the consenting parent Indian custodian(s).
3. The same and last known address of any other living parent or Indian custodian of the child whose parental rights have not been terminated. The petition will also include a statement regarding whether such other parent or Indian custodian agrees with or opposes the voluntary placement of the child in foster care.
4. The Tribal affiliation of the child and of the parents and/or Indian custodian. If the tribal affiliation has not been determined, A statement will be included describing the efforts made to determine whether the child is an Indian child and to identify the tribal affiliation of the child and of the parents and/or Indian custodian.
5. A statement as to whether the Indian child's residence or domicile is on the Tribe's reservation. If there is insufficient information available at the time of filing for a determination regarding the child's residence or domicile, a statement to that effect shall be included.
6. A statement as to whether the Indian child is a ward of the tribal court. If there is insufficient a determination regarding the tribal wardship status of the child, a statement to that effect shall be included.

7. An identification of any tribal court orders affecting the custody of the child to which the superior court may be required to accord full faith and credit. A copy of each such order will be attached to the petition or complaint.
8. The name and address of the prospective foster parents, if known at the time, and their tribal affiliation, if any, or the name and address of the prospective foster care institution, if known at the time.
9. The name and address of the person or agency, if any, through whom the foster care placement was arranged.
10. A statement of the reason for foster care placement.

## **SECTION 6**

### **NOTICE TO TRIBE**

Whenever DSHS obtain a written consent for foster care placement from a parent or Indian custodian of an Indian child, DSHS will immediately send a copy of the consent to the tribe. The consent shall be sent certified mail, returned receipt requested. Whenever possible, DSHS will not commence the court process for validation of the voluntary consent until at least five (5) business days after the consent is sent to the tribe. If the circumstances necessitate a shorter period, DSHS will provide the tribe's contact person(s), designated in this Agreement, with telephone notice of the consent in a time sufficient to permit a tribal representative to communicate, if possible, with the parent or Indian custodian and to appear in court at any subsequently scheduled validation hearing.

Upon filing the consent with the court DSHS will notify the tribe as soon as possible by telephone of the date, time, and place of any scheduled validation hearing and will also provide the Tribe with a copy of any petitions or other court documents filed in the proceeding. DSHS will also notify the Tribe of the clerk of the superior court before which the proceeding is to be held and the name and telephone number of the judge of the superior court assigned to the case, if known.

Notice to the Tribe will include a statement that if the Tribe petitions for intervention in a superior court proceeding for the voluntary foster care placement of an Indian child, DSHS will not oppose the Tribe's request for intervention. Notice to the tribe will also include a statement that if the Tribe's petition to transfer the proceeding to the tribal court, DSHS will support the Tribe's petition, unless there exists grounds to object to transfer as, specified in part II, section 18 of this agreement.

## **SECTION 7**

### **NOTICE TO NON-CONSENTING PARENT**

Whenever DSHS obtains a written consent for foster care placement from a parent or Indian custodian of an Indian child, DSHS will immediately send a copy of the consent to any parent whose parental rights have not been terminated and who has not consented to the foster care placement. The consent shall be sent by certified mail, return receipt requested. Whenever possible DSHS will not commence the court process for validation of the consent until at least five (5) business days after the consent is sent to the non-consenting parent. If the circumstances necessitate a shorter period, DSHS will provide the non-consenting parent with notice of the consent in a time sufficient to permit such parent to appear in court at any subsequently scheduled validation hearing.

Upon filing the consent with the court, DSHS will provide notice to the non – consenting parent of the date, time, and place of any schedule validation hearing. The notice will also contain the following information.

1. A statement of the right of the parent to be represented by counsel.
2. A statement of the right of the parent to request that the superior court proceeding be transferred to the tribal court.
3. The location, mailing, address and telephone number of the clerks of the superior court before which proceeding is to be held and the name and telephone number of the judge of the superior court assigned to the case, if known
4. The legal consequences to the non –consenting parent of any adjudication that result in the placement of the child in foster care.

DSHS will also provide the non – consenting parent with a copy of the notice sent to the Tribe and a copy of any petitions or other court documents filed by DSHS in the proceeding.

## **SECTION 8**

### **NOTICE TO EXTENDED FAMILY**

Whenever a parent or Indian custodian has voluntarily consented to the foster care placement of an Indian child and such consent has been validated by a superior court, DSHS will for with notify the child's extended family members of the validated consent and of their legal right to be preferentially considered for the foster care placement of the child. The notice will include information on the next scheduled court proceedings affecting the custody of the child and on the steps, if any, that the extended family members must take in order to be properly considered as a placement for the child. The notice shall be sent immediately following validation of the consent to foster care placement or at such time as the identify of extended family members become known. In carrying out the notice requirements of this section, the parties agree that DSHS will notify only those extended family members whose identities and addresses are known or, through the assistance of the tribe, the BIA or other appropriate sources can be reasonably ascertained. Upon the request of DSHS, the tribe will assist whenever possible in providing the notice in this section.

Where a parent or Indian custodian objects to notification of an extended family member, DSHS in consultation with the tribe, will consider the objection. If the objection is based upon the ground that the child would be harmed by contact with the extended family member, notice to that person will not be given family member, as required in this section if DSHS, in consultation with the tribe, determines that the objection is based upon the parent's or Indian custodian's desire for anonymity or upon other considerations, DSHS will consult with the Tribe and if it is determined that notification of the extended family member would serve the Indian child's best interest, DSHS will take the necessary steps to provide notification as possible herein, including taking necessary steps to obtain court orders authorizing notification.

## **SECTION 9**

### **DSHS POST-PLACEMENT SERVICES**

Once an Indian child has been voluntarily placed in foster care, DSHS, in cooperation with the Tribe's social services program, will actively provide reasonably available remedial and rehabilitative program designed to return the child to the custody of the parent or Indian custodian.

The remedial and rehabilitative services to be provided will be based on a plan designed to effectively address and eliminate problems destructive to the family. The plan will be formulated with the direct collaboration of the parent (s) or Indian custodians, the child, if of sufficient age, grandparents, when appropriate, and the Tribe. Whenever foster care placement is likely to exceed thirty (30) days, formulation of the plan will involve, if possible, a qualified expert (s).

The plan will be designed in a way that takes into account the prevailing social and cultural conditions in the child's Indian community. The plan shall encourage maintenance of an ongoing familial relationship between the parents or Indian custodians and the child, as well as between child, its siblings, and other members of the child's extended family throughout the time that DSHS is engaged in efforts to prevent family breakup.

The plane shall encourage maximum visitation between the parents or Indian custodian and the child, as well as between the child, its siblings, and other members of the child's extended family. Whenever possible, visitation occur in the home of the parent or Indian custodians, the home of the other parents or some other non – institutional setting that permits the child and those with whom the child is visiting to have a natural and unsupervised interaction. If parental indigency precludes frequent visitation, DSHS agrees to provide, subject to availability of funds, financial or other assistance so as to enable the parent to maintain frequent visitation.

Implementation of the plan will stress to use and involvement, where available, of community services and resources specifically for Indian families. These include the extended family, tribal social services and other programs, tribal organization programs aimed at preventing family breakup, traditional Indian therapy and administered by traditional practitioners, where available and appropriate, individual Indian caregivers who have skills to help the family, and the resources of the Bureau of Indian Affairs and Indian Health Service. Whenever possible, implementation shall also involve a qualified expert(s).

In addition, DSHS, in cooperation with the Tribe's social services program, will assist the child in adjusting emotionally and psychologically to the foster care placement. As may be necessary, this assistance will include a qualified expert and such other expertise as may be appropriate. When the foster care placement is interracial, DSHS, when necessary, will provide Indian children to assist the child in dealing with or overcoming adjustment problems unique to such interracial placements.

DSHS in cooperation with the Tribe's social services program, will also provide the foster care home or facility with information on the background and special needs, if any, of the child. Where necessary, the foster care home or facility will be instructed in foster care parenting skills, in how best to meet the child's special needs and in how best to assist the child's adjustment to foster care. When the foster care placement is interracial, the foster care home or facility will be instructed by a qualified expert(s) in the interracial placement of Indian children on the special developmental and social problems common in such placements and in how best to handle such problems.

During the child's placement in foster care, DSHS, in cooperation with the Tribe's social services program and upon request of the foster care home or facility, the child, if of sufficient age, or as necessary, will provide the child and the foster care home or facility with help in resolving socio-psychological problems related to the foster care placement. The foster care home or facility and the child, if of sufficient age, shall be informed of this service.

DSHS, in cooperation with the Tribe's social services program, agrees to regularly monitor the foster care home or facility for overall suitability and to assure that the child is not the object of abuse or neglect, that the child's special needs are addressed and that the child's relationship with its parents, siblings, extended family members and the Tribe is encouraged.



## **SECTION 10**

### **TERMINATION OF VOLUNTARY FOSTER CARE PLACEMENT-NOTICE**

Whenever voluntary foster care placement is terminated and the child is returned to the custody of a parent or Indian custodian, DSHS will so notify any other parent or Indian custodian of the child, the Tribe, and any other party to the voluntary foster care placement proceeding. Such notification will be in writing and will specify the name and address of the person to whom the child has been returned.

## **SECTION 11**

### **FOSTER CARE PETITION OF CHILD (ALTERNATIVE RESIDENTIAL PLACEMENT-ARP)**

Whenever an Indian child seeks placement in foster care (ARP) by DSHS, the Department will seek to determine the residence or domicile of the child and his/her parents and also determine whether the child is a ward of the tribal court. If the child is a ward of the tribal court or is domiciled or resident on the Tribe's reservation, the case will be immediately referred to the Tribe.

If the child/parents reside in an off-reservation community, DSHS will request assistance from a qualified expert(s) approved by the Tribe or an Indian interpreter and allow the expert or Indian interpreter to contact the child/family to assist in communication of the intent and purpose of transferring the matter to tribal court. Only after active documented efforts to assist the child/family to file in tribal court have been made and have failed, and only if the additional statutory criteria of RCW 13.32A have been satisfied, shall DSHS file the ARP in a state court.

DSHS shall have no responsibility to notify the Tribe when the child and/or parent petitions the court directly without DSHS involvement. However, DSHS will notify the Tribe whenever DSHS is a party to an ARP proceeding involving an Indian child. Such notice will include the names, tribal affiliation(s), residence addresses, and domiciles of the child and the parents. The notice will also include the date, time, and place of the next scheduled proceeding in the matter.

## **SECTION 12**

### **TRANSFORMING VOLUNTARY INTO INVOLUNTARY PLACEMENT**

Whenever DSHS determines to petition a state court to change a voluntary foster care placement into an involuntary foster care placement, DSHS will notify the Tribe and the parents or Indian custodians of the child, at least fifteen (15) days prior to the filing of such petition, of the determination and the reasons therefore. The notice to the parents or Indian custodian shall inform him/her of the right to withdraw consent to the foster care placement and obtain the immediate return of custody of the child unless a court order continuing foster care placement has previously been entered in accordance with 25 U.S.C. Section 1912 or unless the return of custody would likely cause an emergency resulting in imminent physical harm to the child. If DSHS determines that an emergency precludes return of the child to the parents or Indian custodians, DSHS will proceed in accordance with the emergency foster care provisions set forth in Part IV of this Agreement.

DSHS will not seek to petition any court for an involuntary foster care placement where such petition is based solely upon the prior voluntary placement of the child.

## **SECTION 13**

### **DSHS REVIEW OF FOSTER CARE AND PREADOPTIVE PLACEMENT**

See Miscellaneous Provisions, Part X, Section 1.

**PART VII.**

**VOLUNTARY CONSENT TO  
RELINQUISHMENT/TERMINATION  
OF PARENTAL RIGHTS OR ADOPTION**

## SECTION 1

### **VOLUNTARY CONSENT TO RELINQUISHMENT/TERMINATION OF PARENTAL RIGHTS OR ADOPTION**

#### A. Indian Child – Ward of Tribal Court/Domiciled Or Resident on Tribe’s Reservation

Whenever a parent or Indian custodian voluntarily consents to relinquishment and termination of parental rights or voluntarily consents to the adoption of an Indian child who is a ward of the tribal court or who is domiciled or resident on the Tribe’s reservation, DSHS will inform the parent or Indian custodian that the Tribe has exclusive jurisdiction to approve the termination of parental right or adoption.

#### B. Indian Child - Not Ward of Tribal Court/Not Domiciled Or Resident on Tribe’s Reservation

If a parent or Indian custodian, of an Indian child not a ward of the tribal court and not domiciled or resident on the Tribe’s reservation, seeks to voluntarily relinquish and terminate parental rights or place an Indian child for adoption, DSHS shall advise the individuals involved of the provisions of the Act governing such matters, including the required placement preferences and the inapplicability of the notice and appearance waiver provisions of RCW 26.33.310.

DSHS will advise the parent or Indian custodian and, if known, the prospective adoptive parents, that they may be able to relinquish and terminate parental rights or pursue the adoption of the Indian child through a proceeding in tribal court. Such advice will include informing the parent or Indian custodian and, if known, the prospective adoptive parents, that:

1. Tribal court law and procedures may differ from state law.
2. Tribal court termination of parental rights and adoption orders are entitled to full faith and credit in all the states;
3. The requirements of the Indian Child Welfare Act may not apply in tribal court proceedings, and that this may facilitate completion of the termination or adoption; and
4. DSHS will issue an amended birth certificate in compliance with the order of the tribal court when an adoption decree is issued.



DSHS will provide the parent or Indian custodian, and if known, the prospective adoptive parents, with the name, address, and phone number of the Tribe's contact person.

When a validation of a voluntary consent to relinquishment and termination of parental rights or adoption is to proceed in superior court, DSHS agrees to encourage the consenting parent the court to engage an Indian interpreter or representative of the Tribe's social services program to participate in order to assure that the consent is voluntary and does not involve fraud or duress. The efforts of DSHS to secure the involvement of an Indian interpreter or representative of the Tribe's social services program will be documented. Upon request, the documentation shall be provided to the Tribe.



## **SECTION 2**

### **TRIBAL SOCIAL SERVICES INVOLVEMENT**

Prior to seeking validation of a voluntary consent to relinquishment/termination of parental rights or adoption before a state court judge, DSHS will encourage the parent or Indian custodian to contact the Tribe regarding available services to assist the parent or Indian custodian to retain custody of the child or to consider some other arrangement for the child that would further the child's familial and tribal relationship. DSHS will document its efforts to have the parent or Indian custodian contact the Tribe concerning such services. If the parent or Indian custodian is referred by DSHS to an identifiable individual within the Tribe for provision of social services, the date of the referral and the identity of the individual to whom the referral was made will be included in the case documentation. Upon request, the documentation will be provided to the Tribe.

## **SECTION 3**

### **DSHS PRE-VALIDATION SERVICES**

Prior to assisting a parent or Indian custodian to obtain state court validation of voluntary consent to relinquishment/termination of parental rights or adoption, DSHS, in consultation with the Tribal's social services program wherever possible, will actively provide services to the parent or Indian custodian designed to prevent the breakup of the Indian family and facilitate the maintenance of the child in the custody of the parent or Indian custodian.

Prior to assisting a parent or Indian custodian to obtain state court validation of a voluntary consent to relinquishment/termination or adoption, DSHS, in circumstances where the identity of non-consenting parent is unknown, will seek to identify and locate such parent. Whenever possible, the Tribe will assist in this effort.

## **SECTION 4**

### **EXECUTION OF CONSENT TO RELINQUISHMENT/TERMINATION OF PARENTAL RIGHTS OR ADOPTION**

Prior to having a parent or Indian custodian execute a consent to relinquishment/termination of parental rights or adoption of an Indian child, DSHS , utilizing an Indian interpreter whenever possible , will explain the content of the consent to the parent or Indian custodian. In every case , a parent or Indian custodian will not be permitted to sign the consent until he/she has read the consent , or , in cases where there is doubt regarding the person's ability to read and understand the consent , has had the consent read to him/her.

A copy of the consent will be provided to the consenting parent or custodian.

## **SECTION 5**

### **CONTENT OF CONSENT TO RELINQUISHMENT/TERMINATION OR ADOPTION**

A voluntary consent to relinquishment/termination of parental rights or adoption will contain the following information:

1. The name, date of birth and last known address of the Indian child.
2. The name and last known address of the child's parents and Indian custodians, if any.
3. The tribal affiliation, if known, of the child and the parents and/or Indian custodians.
4. A statement affirming, if known, of the consent to was not given prior to or within ten (10) days after the child's birth.
5. A statement of the reasons for the consent to relinquishment/termination of parental rights or adoption.
6. A statement of the actual and any potential legal consequences of a court order terminating parental rights and granting the adoption of the child.
7. A statement acknowledging the understanding of the parent or Indian custodian that the consent, in order to be valid, must be approved in a court proceeding at which the parent or Indian custodian personally appears.
8. A statement acknowledging the understanding of the parent or Indian custodian that he/she has the right to obtain the advice and representation of counsel with respect to the relinquishment/termination of parental rights and/or adoption.
9. A statement acknowledging the understanding of the parent or Indian custodian that he/she has the right to withdraw consent to the relinquishment/termination of parental rights and/or adoption for any reason and at any time prior to the entry of a final decree of termination or adoption, as the case may be, and upon such withdrawal, to have the child promptly returned to the custody of

the parent or Indian custodian unless a court order for foster care placement has previously been entered in accordance with 25 U.S.C 1912 or unless the return of custody would likely cause an emergency resulting in imminent physical harm to the child.

10. A statement acknowledging the understanding of the parent or Indian custodian, as a condition that a copy of the consent is to be sent to the Tribe and that the parent or Indian custodian has been advised of the provisions of the act governing voluntary consent to termination of parental rights or adoption.

11. The promise, if any, made to the parent or Indian custodian, as a condition, as a condition of the parent or Indian custodian's consent, regarding the tribal affiliation, health, ethnic, religious, economic, or other personal characteristics of any adoptive family with which the child will be placed. (Any discussion between the parent and DSHS regarding these issues shall be documented in the case record.)

12. The DSHS office and worker involved in the preparation of the consent and the date the parent or Indian custodian signed the consent.

## **SECTION 6**

### **PETITION TO SUPERIOR COURT – CONTENT OF PETITION FOR VOLUNTARY RELINQUISHMENT/TERMINATION OF PARENTAL RIGHTS**

Whenever DSHS petitions a superior court for the voluntary relinquishment/termination of the parental relationship between an Indian child and his/her parent (s) or Indian custodian, the petition will be verified and will contain the following information:

1. The name, date of birth and last known address of the Indian child.
2. The name and address of the consenting parent (s) and Indian child custodian (s)
3. The name and last known address of any other living parent or Indian custodian of the child whose parental or custodial rights have not been terminated. The petition will also include & statement regarding whether or opposes the petition.
4. The tribal affiliation of the child and of the parents and/or Indian custodian. If the tribal affiliation has not been determined, & statement will be included describing the efforts made to determine whether the child is an Indian child and of the parents and/or Indian custodians.
5. A statement as to whether the Indian child's residence or domicile is on the tribe's reservation. If there is insufficient information available at the time of filing for a determination regarding the child's residence or domicile, a statement to that effect shall be included.
6. A statement as to whether the Indian child is a ward of the tribal court. If there is insufficient information available at the time of filing for a determination regarding the tribal wardship status of the child, a statement to that effect shall be included.

7. An identification of any tribal court orders affecting the custody of the child to which the superior court may be required to accord full faith and credit. A copy of each such order shall be attached to the petition.
8. The name, address, and tribal affiliation, if any, of the prospective adoptive parents at the time and if the prospective adoptive parents have consented to disclosure of such information.
9. The name address of the person or agency, if any, by or through whom any pre-adoptive or adoptive placement has been or is to be arranged.
10. A statement of the reasons for the relinquishment/termination of parent rights.



## **SECTION 7**

### **NOTICE TO THE TRIBE**

Whenever DSHS intends to request state court validation of a voluntary consent to relinquishment/termination of parental rights or the placement of the child for adoption, DSHS will provide the tribe with at least ten (10) business days written notice of the date, time and place of any proceeding in court to validate the consent. The notice shall be sent by certified mail return receipt requested. If exceptional circumstances necessitate a shorter notice period, DSHS in this Agreement, with telephone notice in a time sufficient to permit a tribal representative to communicate with the parent or Indian custodian, if possible, and to appear in court at any subsequently scheduled validation hearing. The Tribal will be provided a copy of the signed consent and a copy of any petitions or other court documents filed by DSHSW in the proceeding.

The notice to the Tribe will contain the following information:

1. A statement of the right of the tribal to intervene in any superior court proceeding for the voluntary termination of parental rights and in any superior court adoption proceeding through which parental rights are to be terminated.
2. A statement of the right of the Tribal, in a superior court proceeding involving the adoption of an Indian child but not involving the termination of the Indian child's parents, to ask the superior court to grant the Tribal intervention under the civil procedure laws of the State.
3. A statement of the right of the tribal to request that any superior court proceeding that may result in the termination of parent rights be transferred to the tribal court.
4. The location. Mailing address and telephone number of the clerk of the superior court before which the proceeding is to be held and the name and telephone number of the judge of the superior court assigned to the case, if known.

The notice will include a statement that if the tribal petitions for intervention in a superior court proceeding involving the relinquishment/termination of parental rights or adoption of an Indian child, DSHS will not oppose the tribal's request for

intervention. The notice will also include a statement that if the Tribal request a transfer to tribal court of a superior court proceeding that may result in the termination of parental rights, DSHS will support the Tribal request, unless there exists grounds to object to the transfer, as specified in part 11, Section 18 of this agreement.

## **SECTION 8**

### **NOTICE TO NON-CONSENTING PARENT**

Whenever DSHS intends to request state court validation of a voluntary consent to relinquishment/termination of parental rights or adoption, DSHS will provide any parent, whose parental rights have not been terminated and who has not consented to such termination of parental rights or to the adoption of the child, with at least twenty (20) business days written notice of the date, time, and place of any proceeding in court to validate the consent. Then notice shall be sent by certified mail return receipt requested. If exceptional circumstances necessitate a shorter notice period, DSHS will provide the non-consenting parent with notice in a time sufficient to permit such parent to appear in court. The parent shall be provided with a copy of the consenting parent's signed consent, a copy of the notice sent to the tribe, and a copy of any petitions or other court documents filed by DSHS in the proceeding.

The notice to the non-consenting parent will also contain the following information:

1. A statement of the right of the parent to be represented by counsel.
2. A statement that, in an adoption proceeding where the non-consenting parent's parental rights may be involuntarily terminated, if the parent is unable to afford counsel, the superior court pursuant to 25 U.S.C. Section 1912(b) will appoint counsel to represent him/her, provided that a request is made for such appointment and the court determines that the person making the request is indigent.
3. A statement of the right of the non-consenting parent to request transfer to the tribal court of any superior court proceeding that may result in the termination of the non-consenting parent's parental rights or in the foster care placement of the child.
4. The location, mailing address and telephone number of the clerk of the superior court before which the proceeding is to be held and the name and telephone number of the judge of the superior court assigned to the case, if known.

5. The potential legal consequences to the parental rights of the non-consenting parent of an adjudication terminating the parental rights of the consenting parent or granting the adoption or foster care placement of the child.
6. The potential legal consequences to the non-consenting parent of failure to respond to notice of the proceeding.
7. A statement as to whether the non-consenting parent must file a written response to the petition and, if so, the date that the response must be received by the superior court. The statement shall include an explanation of the legal consequences of failure to file a written response.
8. A statement of the date, time and place of the next scheduled proceeding in the matter, whether those notified to appear must appear in person at such proceeding, and the legal consequences of failure to so appear.

## **SECTION 9**

### **NOTICE TO EXTENDED FAMILY**

Whenever a parent or Indian custodian has voluntarily consented to relinquishment/termination of parental rights or the placement of an Indian child for adoption and such consent has been validated by superior court, DSHS will forthwith notify extended family members of the validated consent and of their legal right to be preferentially considered for the foster care, preadoptive placement, or adoptive placement of the child. The notice will also include information on the next-scheduled court proceedings affecting the custody of the child and on the steps, if any, that the extended family member must take in order to be properly considered as a placement of the child. The notice shall be sent by certified mail return receipt requested. The notice shall be sent immediately following validation of the consent or at such time as the identity of extended family members becomes known. In carrying out the notice requirements of this section, the parties agree that DSHS will notify only those extended family members whose identities and addresses are known or, through the assistance of the Tribe, that BIA or other appropriate sources, can be reasonably ascertained. Upon the request of DSHS, the Tribe will assist whenever possible in providing the notice required in this section.

Where a parent or Indian custodian objects to notification of an extended family member, DSHS, in consultation with the Tribe, will consider the objection. If the objection is based upon the ground that the child would be harmed by contact with the extended family member, notice to that person will not be given as required in this section if DSHS, in consultation with the Tribe, determines that the objection is reasonably based. If the objection is based upon the parent's or Indian custodian's desire for anonymity or upon other considerations, DSHS will consult with the Tribe and if it is determined that notification of the extended family member would serve the Indian child's best interests, DSHS will take necessary steps to provide notification as provided herein, including taking necessary steps to obtain court orders authorizing notification.

## **SECTION 10**

### **CONTENT OF FINAL DECREE OF VOLUNTARY TERMINATION OF PARENTAL RIGHTS**

In any superior court voluntary relinquishment/termination of parental rights proceeding in which DSHS is a party or is providing assistance to a parent or Indian custodian, DSHS will seek a final decree of termination that includes:

1. A statement regarding the jurisdictional authority of the superior court in the proceeding.
2. A statement that any voluntary consent to relinquishment/termination was not given prior to or within the ten (10) days following the birth of the child (the child's date of birth and the date of the consent shall be stated).
3. A statement that the parent appeared in court on a date certain and was informed by the judge of the terms and consequences of any voluntary consent to relinquishment/termination.
4. A statement that the parent fully understood the explanation of such terms and consequences in English or, where necessary, that the explanation was interpreted into a language that the parent understood and that the parent fully understood the explanation of such terms and consequences in the language into which such terms and consequences were translated.
5. A statement of the reasons for the consent.
6. The names and address of any prospective adoptive parent(s) whose identity is known to the consenting parent.
7. A statement identifying the promises, if any, made to the parent, as a condition of the parent's consent, regarding the tribal affiliation, health, ethnic, religious, economic or other personal characteristics of any adoptive family with which the child would be placed.

## **SECTION 11**

### **DSHS POST-PLACEMENT SERVICES**

Whenever an Indian child is in foster care or a preadoptive home following a voluntary relinquishment/termination of parental rights or voluntary consent to adoption, DSHS, in cooperation with the Tribe's social services program, will develop a plan for the future care, custody and control of the child consistent with the best interests of the child, any special needs of the child and the culture and customs of the child's Indian community. The plan shall be formulated with the direct collaboration of the child, if of sufficient age, and whenever possible, other members of the child's extended family. Formulation of the plan shall also involve a qualified expert(s). The principal focus of the plan is to identify the most suitable permanent living arrangement for the child.

The plan shall encourage maintenance of an on-going familial relationship between the child, its siblings and other members of the child's extended family. The plan shall also explore whether, despite the termination of parental rights, return of the child to the custody of the natural parent(s) is a suitable permanent living arrangement for the child and if social services, whether it is feasible to provide the parents of the child with remedial and rehabilitative programs designed to return the custody of the child to the parent(s). If such programs are feasible, DSHS, in cooperation with the Tribe's social services programs, will provide the programs to the parent(s) with the aim of returning the child to the custody of the parent(s) and, if necessary, obtaining an order vacating the termination of parental rights.

When the plan for the child does not include the possibility of return to parental custody, DSHS, in cooperation with the Tribe's social services program, will assist the child and the natural parents in adjusting emotionally and psychologically to the termination of parental rights and to the foster care or preadoptive placement. This assistance shall involve a qualified expert and such other expertise as may be appropriate. When the foster care or preadoptive placement is interracial, DSHS, when necessary, will provide a qualified expert in the interracial placement of Indian children to assist the child in dealing with or overcoming adjustment problems unique to such interracial placements.

DSHS, in cooperation with the Tribe's social services program, will also provide the foster care home or facility or preadoptive home with information on the background and special needs, if any, of the child. Where necessary, the foster care home or facility or preadoptive home will be instructed in necessary parenting skills, in how best to meet the child's special needs, and in how to assist the child's best adjustment to foster care or preadoptive placement. When the foster care or preadoptive placement is interracial, the foster care home or facility or the preadoptive home shall be instructed by a qualified expert(s) in the interracial placement of Indian children on the special developmental and social problems common in such placements and in how best to handle such problems.

During the child's placement in foster care or preadoptive home, DSHS, in cooperation with the Tribe's social services program and upon request of the foster care home or facility or preadoptive home or the child, if of sufficient age, or as necessary, shall provide the child and the foster care home or facility or preadoptive home with help in resolving socio-psychological problems related to the foster care or preadoptive placement. The foster care home or facility or preadoptive home and the child, when of sufficient age, shall be informed of this service.

DSHS, in cooperation with the Tribe's social services program, shall regularly monitor the foster care or preadoptive home or facility for overall suitability and to assure that the child is not the object of abuse or neglect, that the child's special needs are addressed and that the child's relationship with its siblings, extended family members and the Tribe is encouraged.



## **SECTION 12**

### **DSHS SERVICES FOLLOWING WITHDRAWAL OF VOLUNTARY CONSENT TO RELINQUISHMENT/TERMINATION OR ADOPTION**

If a parent or Indian custodian withdraws consent to relinquishment/termination of parental rights or adoption of an Indian child prior to entry of a final decree of termination or adoption, as the case may be, the child will promptly be returned to the custody of the parent or Indian custodian unless:

1. The parent or Indian custodian voluntarily consents to foster care placement of the child. (The procedures set forth in Part VI of this Agreement, regarding voluntary foster care placement, shall be followed.); or
2. A court order for foster care placement has previously entered in accordance with 25 U.S.C. 1912 remains in effect. (Services shall be provided to the family as set forth in Part V, Section 9, of this Agreement.); or
3. Return of custody would likely cause an emergency resulting in imminent physical harm to the child. (The procedure set forth in Part IV of this Agreement, regarding emergency foster care placements, shall be followed.)

If the child is returned to the custody of the parent or Indian custodian following withdrawal of the consent to relinquishment/termination or adoption, DSHS, in cooperation with the Tribe's social services program, shall assist the child to make as successful a return as possible to the custody of the parent(s). Assistance shall include helping the child to adjust emotionally and psychologically to the change in placement and helping the parent to understand and effectively meet the needs of the child. Assistance will also include help to the foster care or preadoptive family or facility in assisting the child to make a successful transition back to parental custody. As may be necessary, a qualified expert shall be engaged to help the parent(s), the child, and the foster care or preadoptive family or facility.

## **PART VIII**

### **ADOPTIVE PLACEMENT AND ADOPTION**

## **SECTION 1**

### **ADOPTIVE PLACEMENT**

Whenever an Indian child eligible for membership in the Tribe is placed for adoption, DSHS will seek to secure tribal membership for the child prior to entry of a final decree of adoption.

Whenever an Indian child is placed for adoption, , in, cooperation with the Tribe's social services program, will, until entry of a final decree of adoption, regularly evaluate the overall suitability of the placement and shall specifically monitor the placement to assure that the child is not the object of abuse or neglect, the child's relationship with its siblings and, where applicable, other members of the child's birth extended family is encouraged, that the child's relationship with the Tribe is properly advanced, and that all other conditions and commitments of the placement are being met.

DSHS, in cooperation with the Tribe's social services program, will assist the child and the adoptive parents and, in the case of a voluntary consent to adoption, the natural parent(s) to emotionally and psychologically adjust to the adoptive placement. This assistance shall include a qualified expert and such other expertise as may be appropriate. When the adoptive placement is interracial, DSHS, when necessary will provide a qualified expert in the interracial placement of Indian children to assist the child and the adoptive parent(s) in dealing with or overcoming adjustment problems unique to such interracial placements.

DSHS, in cooperation with the Tribe's social services program will also provide the adoptive parents with information on the background and special needs, if any, of the child. Where necessary, the adoptive parents shall be instructed in how best to meet the child's special needs and in how to assist the child's best adjustment to the adoptive placement. When the adoptive placement is interracial, the adoptive parent(s) shall be instructed by a qualified expert(s) in the interracial placement of Indian children on the special developmental and social problems common in such placements and in how best to handle such problems.

Whenever an Indian child is the first child of the adoptive parents or whenever the adoptive parents are assessed to be non-interracially oriented or otherwise unable to meet any special needs of the child, DSHS in cooperation with the Tribe's social services program, will provide training to the adoptive parents in interracial or special needs parenting skills.

Prior to and following the entry of a final decree of adoption and continuing throughout the Indian child's minority, the Tribe's social services program, whenever possible and upon the request of the adoptive parents or child, will provide the adoptive family with assistance in resolving problems related to the adoption. The Tribe will notify the adoptive family and the child, when of sufficient age, regarding the availability of this service.

In the event that the parent(s) of an Indian child withdraws a voluntary consent to the adoptive placement prior to entry of a final decree of adoption, DSHS in cooperation with the Tribe's social services program, will assist the child to make as successful a return as possible to the custody of the parent. Assistance shall include helping the child to adjust emotionally and psychologically to the change in placement and helping the natural parent(s) to understand and effectively meet the needs of the child. Assistance will also include help to the adoptive parents in adjusting to make successful transition to the custody of the natural parent(s). As may be necessary, a qualified expert will be engaged to help the child, the natural parent(s) and the adoptive parent(s).

## **SECTION 2**

### **DSHS CONSENT TO ADOPTION**

DSHS, prior to consenting to the adoption of an Indian child in its custody, will advise the prospective adoptive parents that they may have the option of filing the adoption proceeding in tribal court. DSHS will provide the prospective adoptive parents with the name, address and phone number of the Tribe's contact person. DSHS will also inform the prospective adoptive parents that:

1. Tribal court law and procedures may differ from state law.
2. Tribal court adoption orders are entitled to full faith and credit in all the states;
3. The relinquishments of the Indian Child Welfare Act may not apply in tribal court proceedings, and that this may facilitate completion of the adoption;
4. DSHS will issue an amended birth certificate in compliance with the order of the tribal court when an adoption decree is issued.

Whenever DSHS has permanent custody of an Indian child following termination of parental rights, DSHS will actively involve the Tribe in any deliberations and decisions as to whether DSHS should consent to the adoption of the child. If the Tribe objects to the plan for adoption, DSHS, with the involvement of the Tribe's social services program will conduct a detailed review of the caseplan, and if DSHS determines to consent over the Tribe's objection, DSHS will document in writing the basis for such determination.

When the Tribe objects to the plan, DSHS will social services advise the court in writing and will attach any written statement from the Tribe expressing the basis of the objection.

## **SECTION 3**

### **INFORMATION NECESSARY UNDER IOWA-CONTENT OF FINAL DECREE OF ADOPTION-VISITATION ORDERS**

Whenever DSHS is a party in any superior court adoption proceedings involving an Indian child, DSHS will provide the following information to the court:

1. The name and tribal affiliation of the child;
2. The name and location of the Indian child's tribe;
3. The names and addresses of the child's biological parents;
4. The names and addresses of minor biological siblings where the parent-child relationship between the siblings and biological parents has not previously been terminated;
5. If ascertainable upon inquiry to the biological parent in circumstances where the parent-child relationship has been previously terminated, a statement indicating whether the child has other biological siblings and if so, the number and sex of the siblings; and
6. The names and addresses of the adoptive parents, if any, of the child's siblings if such adoptive parents request that their identities be made known. DSHS shall have no affirmative duty to ascertain the identity of such adoptive parents or their wishes regarding inclusion of their names/addresses in the adoption decree.
7. The names and addresses of extended family members, including adult siblings, who request that their identities be made known. Although DSHS shall have no affirmative duty to inform family members of their opportunity to make this request, neither shall DSHS intentionally conceal or withhold this information.
8. The names and addresses of the child's adoptive parents; and
9. The identity and business address of any agency having files or information relating to such adoptive placement.

DSHS will provide the above information to the court in writing and will request that the court include such information in the final adoption decree wherever possible.

In cases involving a voluntary consent to adoption by the natural parents, DSHS will request that the court include in the final decree of adoption a statement that the natural parents have been advised of their rights under the Indian Child Welfare Act to petition the court, within two years following entry of the decree, to vacate the adoption on grounds that the consent to adoption was obtained through fraud or duress.

If all the parties to the adoption have reached a clear agreement regarding continuing contact between the child, the natural parents and/or extended family members, DSHS will assist the parties to set forth the terms of the agreement in an order of visitation separate and apart from the adoption decree.

## **SECTION 4**

### **RELEASE OF COURT ADOPTION RECORDS TO THE TRIBE**

Prior to the conclusion of any superior court adoption proceeding involving an Indian child and in which the Tribe is not a party, DSHS, in proceedings in which it is involved, will seek permission from the court to send the Tribe a copy of the final decree of adoption and such other records of the proceeding as the Tribe may request.

The Tribe agrees to maintain the confidentiality of these records unless dissemination of information from the records is specifically authorized by federal law, state law, or tribal law. See Part II, Section 15 of this Agreement, regarding confidentiality of records and information.



## **SECTION 5**

### **PETITION TO VACATE VOLUNTARY TERMINATION OR ADOPTION DECREE**

Whenever a parent petitions under the Act to vacate a decree of voluntary termination or adoption due to fraud or duress in obtaining the consent to termination or adoption, DSHS, in cooperation with the Tribe's social services program, will examine the circumstances surrounding any consent in which DSHS was involved. Where the Tribe was involved in obtaining the consent, DSHS will consult with the Tribe and seek to obtain the Tribe's concurrence in any representations that DSHS intends to make in court. Whenever the Tribe provides DSHS with a written statement regarding the consent, DSHS will submit the Tribe's statement to the court.

DSHS will notify the Tribe of all scheduled hearings on the petition and will, upon receipt of the petition, send a copy of the petition to the Tribe.

In the event that the petition to vacate the termination or adoption is granted, DSHS will notify the Tribe and the natural parents of the child, or the child's prior Indian custodians, in accordance with the requirements of Part IX, Section 11 of this Agreement.

If the child is to be returned to the custody of the natural parent(s), DSHS, in cooperation with the Tribe's social services program, will assist the child to make as successful a return as possible to the custody of the parent. Assistance shall include helping the child to adjust emotionally and psychologically to the change in placement and helping the natural parent(s) to understand and effectively meet the needs of the child. Assistance will also include help to the adoptive parent(s) in adjusting to the loss of the child and in assisting the child to make a successful transition to the custody of the natural parent(s). As may be necessary, a qualified expert shall be engaged to help the child, the natural parents and the adoptive parents.

## **SECTION 6**

### **ISSUANCE OF AMENDED BIRTH CERTIFICATE UPON TRIBAL COURT ADOPTION**

Whenever the Tribe transmits to DSHS (Division of Vital Statistics) the information required by RCW 26.33.280, DSHS will issue an amended birth certificate reflecting the adoption that had been decreed by the tribal court. A copy of the amended birth certificate shall be sent to the adoptive parents and to the Tribe.

**PART IX**

**FOSTER CARE, PREADOPTIVE AND ADOPTIVE  
PLACEMENT PREFERENCES, FUNDING OF PLACEMENTS,  
REVIEW AND TERMINATION OF PLACEMENTS, AND  
PLACEMENT RECORDS**

## **SECTION 1**

### **FOSTER CARE OR PREADOPTIVE PLACEMENT PRIORITIES**

In any voluntary or involuntary foster care or preadoptive placement of an Indian child pursuant to tribal court or superior court order or certification (25 U.S.C. Section 1913 (a)), DSHS will place the child in accordance with an order of preference established by the Tribe, provided that the placement is the least restrictive setting appropriate to the particular needs of the child.

When the Tribe has not established an order of preference, DSHS will use the following order of preference:

1. A member of the child's extended family.
2. A foster home licensed, approved, or specified by the Tribe.
3. An Indian foster home licensed or approved by DSHS or a private agency licensed by DSHS to make such placements.
4. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the needs of the Indian child.

If the Tribe has not established an order of preference, DSHS, whenever possible, will place the child in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. Whenever possible, the child will also be placed within reasonable proximity to his/her home taking into account any special needs of the child. When more than one sibling is the subject of a foster care or preadoptive placement, the siblings will be placed together whenever possible, or in close proximity unless such placement is likely to cause serious physical or emotional harm to one or more of the children. In circumstances where a child's best interests require placement in a non-family setting, or in a placement not within reasonable proximity to his/her home, or in a placement where siblings are separated and not placed in close proximity, DSHS will take reasonable steps to assure that the child is placed in accordance with the preferences prescribed in this section.

In any foster care placement and, wherever possible, in any voluntary preadoptive placement, the location of the placement will provide the parent or Indian custodian with an opportunity to have regular access to the child without undue hardship considering the parent's or Indian custodian's economic, physical and cultural circumstances. The location will also be situated so as to enable siblings to have regular contact with one another and allow other family members to have regular access to the child.

In seeking a place a child within the order of preference established by the Tribe or within the alternative order of preference established in this Agreement, DSHS will make a diligent search of a suitable placement within the order of preference before considering a non-preferred placement. At a minimum, a diligent search will involve the Tribe's social services program, and if necessary, the Bureau of Indian Affairs, in identifying possible preference order placements and in evaluating their suitability. In the event that the Tribe and the Bureau are unable to identify a suitable preference order placement, DSHS will seek such a placement through examination of Washington State and county listings of available Indian homes and through nationally known Indian and other placement programs.

Except when not possible in emergency circumstances, DSHS will not make any foster care or preadoptive placement of an Indian child prior to review and, wherever possible, approval of the proposed placement by the Tribe's social services program. The Tribe agrees to promptly notify DSHS when it would not be in the best interests of a child to be placed in a foster or preadoptive home proposed by DSHS.

Whenever DSHS determines not to place a child in accordance with the Tribe's recommendation or whenever DSHS decides to place a child in a home or institution unacceptable to the Tribe, DSHS will provide the Tribe with a statement detailing its efforts to reach agreement with the Tribe on an appropriate placement and describing the basis for its decision. The statement will be provided to the Tribe within ten (10) days following the placement decision.

**a. Placement Outside of Preference Categories**

DSHS will seek to place an Indian child outside the preference categories prescribed in this Agreement only when one or a combination of the following circumstances exists:

1. The Tribe concurs that the best interests for the child require placement with a non-Indian family or in another setting not within the preference categories.
2. The child has extraordinary physical or emotional needs, attested to by a qualified expert witness, that cannot be addressed by a placement within the preference categories. In such circumstances, DSHS will provide the Tribe with a statement explaining why the child's needs cannot be met by a placement within the preference categories.
3. A diligent search for a placement within the preference categories has been completed and no suitable placement within such categories is available. In determining the suitability of a family, DSHS will evaluate the family in accordance with the social, economic and cultural standards prevailing in the Indian community in which the parent or extended family members maintain social and cultural ties.

A determination that suitable families or institutions within the preference categories do not exist shall be based on the unavailability of an appropriate home for the child but shall not be based on any difference between tribal and State standards for licensing and approval of foster homes or institutions. In complying with the foster or preadoptive home preference requirements of this Agreement, DSHS will use the social and cultural standards for such homes prevailing in the Tribe's community. The Tribe will provide DSHS with a written statement of such standards. The statement will be attached as an exhibit to this Agreement.

Whenever DSHS places an Indian child in foster care outside the preference categories, DSHS in cooperation with the Tribe's social services program, will continue to diligently seek a suitable placement within the preference categories and, at the earliest possible time, will place the child within such preference categories. In determining whether a change of placement would harm the child, DSHS will seek evaluation by a qualified expert.

In seeking to place a child within the preference categories, DSHS agrees to inform all families eligible for foster care payments under the Federal Aid to Families with Dependent Children – Foster Care Program and the Foster Care Maintenance Payments Program of such eligibility.

The Tribe agrees to assist families to make application for financial assistance and DSHS will inform families when an evaluation is fully completed.

**b. Parental and Child Placement Preference**

Where an Indian child is of sufficient age and maturity so as to be able to express a knowledgeable and reasoned opinion regarding his/her placement preference, and where otherwise appropriate under all surrounding circumstances DSHS will take the child's placement preference into consideration in determining placement within the preference categories. Where appropriate, DSHS will also take into consideration the placement preference of the parent.

Whenever a parent, who has voluntarily consented to the foster care or preadoptive placement of an Indian child, requests that his/her identity not be disclosed to those receiving the child, DSHS will give weight to such

request in seeking to place the child within the preference categories set forth in this Agreement.

DSHS will not consider the placement preference of the parent or child to give weight to a parent's request for non-disclosure of identity if to do so is contrary to the best interest of the child or contrary to the underlying purposes and goals of the Indian Child Welfare Act and to this Agreement.



**c. Record of Placement Determination**

For each foster care or preadoptive care placement determination, DSHS will prepare a record summarizing the efforts to provide the parent(s) with remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and describing fully and in detail the factual and other bases, if any, for the determination. Whenever siblings are not placed together, the record will explain in detail the reason justifying separation of the siblings and the steps taken to maintain the siblings relationship following placement. Where the placement is with a family institution not within any of the preference categories, the efforts to find a suitable placement within such categories shall be stated in detail (including the names and addresses of the extended family and the tribally licensed or approved homes contacted). The record will also document in detail the efforts of DSHS to comply with the placement requirements specified in this Agreement and the Act. The record of any preadoptive placement shall be sent to the Tribe at least seven (7) business days prior to any placement of the child. The record of any foster care placement shall be sent to the Tribe prior to such placement, whenever possible, or within seven (7) business days following the placement of the child.

**d. Post-Placement Records**

From time to time as they may be prepared, DSHS will provide the Tribe with reports and records, prepared subsequent to a foster care or preadoptive placement, describing and evaluating the child's adjustment to the placement, the relationship of the child following placement to siblings, natural family members and the Tribe, and such other matters as may be considered in any administrative or judicial review of the placement.

## **SECTION 2**

### **FOSTER CARE PAYMENTS FOR INDIAN CHILDREN**

DSHS agrees to pay for the foster care of Indian children who are placed in foster care by DSHS or who are placed by the Tribe in foster homes licensed by DSHS or a state certified child placing agency. The duty to pay for foster care is contingent upon satisfaction of the eligibility criteria set forth in federal and state law and applicable administrative regulations, including the requirements WAC 388-70.

DSHS also agrees to pay, through contacts between DSHS and the Tribe, for the foster care of Indian children who are placed by the Tribe in foster homes licensed by the Tribe. The obligation of DSHS to enter contracts with the Tribe is subject to the availability of funds and subject to the same eligibility standards and rates of supports applicable to other children for whom DSHS pays foster care.

Foster care payment contracts shall be separately negotiated agreements to be renegotiated as specified in such contracts. Prior to July 1, 1987, DSHS agrees to provide the Tribe a timely opportunity to participate in the formulation of the 1987/1989 biennial budget proposal and enter into contracts if agree. Budget formulation participation shall be limited to matters pertinent to securing funds to finance foster care payment contracts with the Tribe.

Following execution of this Agreement, DSHS agrees, in cooperation with the Tribe, to explore whether foster care payment contracts can be entered into prior to July 1, 1987.

For cross-reference purposes only, foster care payment contracts will be attached to this Agreement as exhibits. The contracts will not form part of this Agreement. Should any provisions of this Agreement and the contracts conflict, the provisions of the contracts shall govern.

Whenever a tribal foster care placement is funded by DSHS, the Tribe agrees to comply with all federal and state laws and regulations governing the utilization of such funds and to cooperate with DSHS, whenever necessary, in documenting such compliance.

## **SECTION 3**

### **GROUP CARE PAYMENT FOR INDIAN CHILDREN**

DSHS will be financially responsible for the group care placement of Indian children only if the group home is licensed by DSHS, and DSHS has custody of the child and authority to remove the child in a cooperative manner after at least seventy-two (72) hours notice to the child care provider, provided that such notice may be waived in emergency situations. Where the child has been placed in DSHS custody for group home placement pursuant to a tribal court order, DSHS shall not be financially responsible for group care placement unless the law and procedures of the tribal court proceeding satisfy the applicable requirements of federal and state laws and regulations.

## **SECTION 4**

### **SOCIAL SECURITY NUMBERS FOR INDIAN CHILDREN IN OUT-OF-HOME PLACEMENTS**

The Tribe agrees to take necessary steps to ensure that each Indian child placed in out-of-home care by the Tribe has a social security number.

## **SECTION 5**

### **CHANGE OF FOSTER CARE PLACEMENT**

Whenever the foster care placement of an Indian child is changed, the new placement shall be in accordance with Part IX, Section 1 of this Agreement, regarding foster care placement priorities, unless the child is returned to the parent of Indian custodian from whose custody the child was originally removed. The Tribe, and the parents or the Indian custodian whose familial rights have not been terminated, shall be notified in writing of the decision to change the Indian child's foster care placement. The notification shall be provided at least seven (7) business days prior to the change in placement, unless exceptional circumstances make a shorter notice period necessary. The notification will explain to the Tribe and the parent or Indian custodian the available procedures for having input into the decision making process and for contesting any decision not to return the child to the custody of the parent or Indian custodian.

DSHS, in cooperation with the Tribe's social services program, agrees to assist the child to emotionally and psychologically adjust to the change in foster care placement and to any new placement. This assistance will include a qualified expert and such other expertise as may be appropriate.

## **SECTION 6**

### **ADOPTION PLACEMENT PRIORITIES**

In any voluntary or involuntary adoption placement of an Indian child pursuant to tribal court or superior court order or certification (25 U.S.C. Section 1913(a)), DSHS will place the child in accordance with an order of preference established by the Tribe. Whenever possible and practicable, the child will be placed in the Tribe's community and, in any event, will be placed in a manner that assures maximum opportunity for the child to maintain and nourish its relationship to the Tribe.

Whenever more than one sibling is the subject of an adoptive placement, the siblings will be placed together whenever possible, or in close proximity unless such placement is likely to cause serious emotional or physical harm to one or more of the children. In circumstances where a child placed for adoption has a sibling(s), the child will be placed, whenever possible and practicable, in a manner that will assure maximum opportunity for maintenance of the siblings relationship.

If the tribe has not established an order of preference, DSHS will place the child in the following order of preference:

1. A member of the child's extended family.
2. Other members of the Tribe.
3. Other Indian families of similar Indian heritage.
4. Other Indian families.

In applying these preferences, suitable families within a tribal or Indian community shall be given priority.

**A. Placement by Tribe's Social Services Program as DSHS Agent**

In seeking to place a child within the order of preference established by the Tribe or within the alternative order of preference established in this Agreement, DSHS agrees to primarily use the Tribe's social services program in identifying possible preference order placements and in evaluating their suitability.

In order to assist the Tribe in identifying suitable preference order placements, DSHS will provide the Tribe's social services program with comprehensive background information on the child's social and psychological history and development including information on all prior placements of the child, the experience of the child in such placements, the extent of the child's relationship with siblings, extended family members and, in the case of a voluntary consent to adoption, with the non-consenting parent. DSHS will also provide the Tribe's social services program with information concerning the interest, if any, of the child's foster parents in adopting the child, information on the current or planned custody and placement of siblings, the child's minority status other than Indian, and other factors that might affect the placement decision.

Within ten (10) days following receipt of an adoption placement referral, the Tribe's social services program shall notify DSHS whether the Tribe will undertake an effort to identify a suitable adoption placement for the Indian child.

If the Tribe agrees to undertake the task of identifying a suitable placement for the Indian child, the Tribe's social services program, within twenty (20) days following receipt of an adoption placement referral, shall notify DSHS:

1. That the Tribe has identified a suitable family and anticipates placement within sixty days; or
2. Regarding a time frame for recruitment of an appropriate family and placement.

Upon request, DSHS agrees to assist the Tribe in identifying a suitable adoption placement for the child.

If within sixty (60) days following receipt of an adoption placement referral, the Tribe is unable to identify a suitable placement for the child, the Tribe shall so notify DSHS.





**e. Direct Placement by DSHS**

Whenever the Tribe notifies DSHS that it will not undertake or has been unable identify a suitable placement for the child, DSHS will make a diligent search for a suitable placement within the order of preference before considering a non-preferred placement. This search will involve, if necessary, the Bureau of Indian Affairs in identifying possible preference order placements, include examination of Washington State and county listings of available Indian homes, and utilize the placement resources of nationally known Indian and other placement programs, including adoption resource exchanges. DSHS will keep the Tribe informed of its progress in seeking an adoption placement for the child and will pursue placement recommendations offered by the Tribe.

DSHS will provide the Tribe on a confidential basis with all adoptive home studies of homes under consideration for placement of the child. A home study will identify whether the adoptive home applicant(s) has a tribal affiliation and, if so, shall identify such affiliation.

DSHS will not make any adoption placement of an Indian child prior to review and, wherever possible, approval of the proposed placement by the Tribe's social services program. The Tribe agrees to promptly notify DSHS when it would not be in the best interest of a child to be placed in an adoptive home proposed by DSHS.

Whenever DSHS determines not to place a child in accordance with the Tribe's recommendation or whenever DSHS decides to place a child in an adoption home unacceptable to the Tribe, DSHS will provide the Tribe with a statement detailing its efforts to reach agreement with the Tribe on an appropriate placement and describing the basis for its decision. The statement will be provided to the Tribe within five (5) working days following the placement decision and prior to placement.

**f. Placement Outside of Preference Categories**

DSHS will seek to place an Indian child outside the preference categories prescribed in this Agreement only when on or a combination of the following circumstances exists:

1. The Tribe concurs that the best interests of the child require placement with a non-Indian family or in an institution.
2. The child has extraordinary physical or emotional needs, attested to by a qualified expert witness, that cannot be addressed by a placement within the preference categories. In such circumstances, DSHS will provide the Tribe with a statement explaining why the child's needs cannot be met by a placement within the preference categories.
3. A diligent search for a placement within the preference categories has been undertaken, for a period of 180 days following the date upon which the child became available for adoption placement, and completed and no suitable placement within such categories is available. In determining the suitability of a family, DSHS will evaluate the family in accordance with the social, economic and cultural in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

A determination that suitable families within the preference categories do not exist shall be based on the unavailability of an appropriate home for the child but shall not be based on any difference between tribal and state standards for the approval of adoption homes.

In complying with the adoptive home preference requirements of this Agreement, DSHS agrees to use the social and cultural standards for such homes prevailing in the Tribe's community. The Tribe will provide DSHS with a written statement of such standards. The statement will be attached as an exhibit to this Agreement.

In exploring the suitability of families within the preference categories, DSHS will inform families about eligibility for the adoption assistance program. DSHS and the Tribe agrees to assist such families to apply for adoption support.

**g. Parental and Child Adoption Placement Preferences**

Where an Indian child is of sufficient age and maturity so as to be able to express a knowledgeable and reasoned opinion regarding his/her adoption placement preference, and when otherwise appropriate under all the surrounding circumstances, DSHS will take the child's placement preference into consideration in determining placement within the preference categories. Where appropriate, DSHS will also take into consideration the placement preference of the parents.

Whenever a parent, who has voluntarily consented to the adoption placement of an Indian child, requests that his/her identity not be disclosed to those receiving the child for adoption, DSHS will give weight to such request in seeking to place the child within the preference categories set forth in this Agreement.

DSHS will not consider the placement preference of the parent or child or give weight to a parent's request for non-disclosure of identity if to do so is contrary to the best interests of the child or contrary to the underlying purposes and goals of the Indian child Welfare Act and to this Agreement.

**h. Record of Placement Determination**

For each adoption placement determination, DSHS will prepare a record describing fully and in detail the factual and other basis, if any, for the determination. Whenever siblings are not placed together, the record will explain in detail the reason justifying separation of the siblings and the steps taken to maintain the sibling relationship following placement. Where the adoption placement is not within any of the preference categories, the efforts to find a suitable placement within such categories shall be stated in detail, together with any available documents of such efforts (including the names and addresses of the extended family and tribally approved homes contacted). The record will also document in detail the efforts of DSHS to comply with the placement requirements specified in this Agreement and the Act. The record will be sent to the Tribe prior to any placement of the child.

**i. Post-Placement Records**

From time to time as they may be prepared, DSHS agrees to provide the Tribe with reports and records, prepared subsequent to an adoptive placement and prior to a final decree of adoption, describing and evaluating the child's adjustment to the adoptive home, the adoptive

home's adjustment to the child, the suitability of the placement, and the extent to which the adoptive home has carried out conditions, if any, of the placement, e.g., assisting the child to maintain relationships with siblings, the natural family and the Tribe.

## **SECTION 7**

### **PREPLACEMENT AND POST-PLACEMENT REPORTS REGARDING ADOPTIVE PLACEMENTS**

Whenever DSHS prepares a preplacement or post-placement report pursuant to RCW 26.33.190, RCW 28.33.200, or RCW 26.33.210, DSHS will invite the Tribe and, whenever possible, a qualified expert to participate in the preparation of the report.

The preplacement or post-placement report will state the role of the Tribe in the preparation of such report and shall fully state the Tribe's recommendations or conclusions and the bases therefore. If the facts indicate that the petitioners for adoption are in violation of 25 U.S.C. Section 1920, the preplacement or post-placement reports shall so inform the court.

Upon filing the report with the court, DSHS agrees to request permission from the court to release the report to the Tribe. If permission is granted, DSHS will immediately transmit the report to the Tribe. The Tribe shall keep the report and its contents confidential in accordance with Part II, Section 15 of this Agreement.

## **SECTION 8**

### **DSHS REVIEW OF ADOPTION PLACEMENT**

Within thirty (30) days after placing an Indian child in the home of prospective adoptive parents, DSHS agrees to conduct a review of the adoptive home placement. Thereafter, DSHS will conduct a review at least every ninety (90) days following the placement, continuing until termination of the placement or entry of the final decree of adoption. In any DSHS review of the adoptive home placement of an Indian child, the Tribe shall have notice of and a right to participate in the review, including access to all files and documents pertaining to the placement. With the concurrence of the Tribe, the LICWAC may participate in the review. Unless mentally or physically rendered incapable of doing so, a child over the age of twelve will also have a right to participate in the review.

At a minimum, the review will evaluate the suitability of the adoptive home placement and, in cases where the parent(s) has the right to withdraw consent to termination of parental rights or to the adoptive placement, whether the best interest of the child are met by adoption or by restoration of the parent-child relationship. Whenever possible, DSHS agrees to involve a qualified expert(s) to participate in the review.

## **SECTION 9**

### **DSHS ADOPTION ASSISTANCE PAYMENTS TO ADOPTIVE FAMILIES WHO ADOPT THROUGH THE TRIBAL COURT**

DSHS, in coordination with the Tribe's social services program, agrees to provide adoption assistance payments to the adoptive parents who have obtained the adoptions of a child through the tribal court, provided that the child and the adoptive parents meet all of the program eligibility requirements of the federal Adoption Assistance Program set forth in 42 U.S.C. 673 and the requirements of RCW 74.13.100-.145, as well as applicable federal and state regulations.

## **SECTION 10**

### **DSHS PAYMENT OF TRIBAL ADOPTION PLACEMENT COSTS**

Subject to the availability of funding, DSHS agrees to pay the reasonable and necessary expenses of the Tribe's social services program in performing adoptive home studies, evaluations of the adoption placement needs of Indian children, and in carrying out such other activities generally recognizes as essential to the adoptive placement of Indian children. Payment of such expenses will be made with respect to Indian children on behalf of whom the Tribe incurs adoption placement costs covered by this section.

It is agreed that any obligation by DSHS to pay for the above specified adoptive placement costs must be set forth in a purchase of service contract between DSHS and the Tribe. The contract will be negotiated separately from this Agreement and will be attached to this agreement as an exhibit. See part II, Section 4, of this Agreement, regarding purchase of child welfare, social, and other services.



## **SECTION 11**

### **TERMINATION OF ADOPTION**

Whenever the parental rights of an Indian child's adoptive parents are voluntary or involuntarily terminated, or whenever a final decree of adoption is vacated or set aside and the child has been placed in the custody of DSHS, or DSHS is a party to the proceeding, DSHS agrees to notify the Tribe and the natural parents of the child, or the child's prior Indian custodians, or the action taken. The notification will be provided within the five (5) days from the date of entry of any court order terminating the parental rights of the adoptive parents or vacating or setting aside of the adoption, and shall inform the parent or prior Indian custodian and the Tribe of the right of the parent or prior Indian custodian to petition the court for a return to the custody of the child. The notice will also inform the parent or prior Indian custodian and the Tribe as to whether DSHS will oppose the child's return to the custody of the parent or prior Indian custodian and, in the event of such opposition, the reasons therefore.

DSHS agrees not to oppose the return of the child to the custody of the parent or prior Indian custodian in the absence of a thorough investigation into and evaluation of the suitability of such parent or prior Indian custodian to resume custody. The investigation will be completed within ninety (90) days following the termination of the adoptive parents' parental right or the setting aside of the final decree of adoption. The Tribe and a qualified expert will be invited by DSHS to participate in any such investigation or evaluation. If upon completion of such investigation and evaluations, DSHS and the Tribe determine that remedial and rehabilitative programs designed to return the custody of the child to the parent or Indian custodian is in the child's best interests but is likely to result in the successful reunification of the child with the parent(s) or Indian custodians, DSHS in cooperation with the Tribe's social services program, will develop an appropriate service plan. The plan will be formulated with the direct collaboration of the parent or Indian custodian, the child, if of sufficient age, and whenever possible qualified experts. DSHS will not oppose the return of the child to the custody of the parent or prior Indian custodian unless the plan prove unsuccessful or unless the return of the child to the custody of the parent or Indian custodian is likely to cause emotional or physical harm to the child.

DSHS, in cooperation with the Tribe's social services program, will assist the child to emotionally and psychologically adjust to the termination of the adoption and the any new placement, including return to the custody of the natural parent(s). The assistance will include a qualified expert and such other expert(s) as may be appropriate and necessary.



Whenever DSHS determines not to follow the recommendations of the Tribe or the qualified expert to develop a plan to return the child to the parent or Indian custodian, DSHS will document in the case record and in a written report to the court the recommendation of the Tribe or qualified expert, the reasons for the recommendations, and the reasons for its determination not to follow those recommendations. Where the Tribe or qualified expert has provided DSHS with a written statement including recommendations, DSHS will provide the court with a copy of such statement.

Whenever an adoptive placement ends, DSHS, until such time, if any, as the child may be returned to the custody of the biological parent(s), agrees to place the child in accordance with the foster care or adoption placement preferences specified in Part IX, Section 1 and Section 6 of this Agreement.

## **SECTION 12**

### **RELEASE OF BIRTH RECORD INFORMATION TO TRIBE**

Prior to the entry of a final decree of adoption, DSHS agrees to provide the tribe with a copy of the Indian child's original certification of birth. After the entry of a final decree of adoption, DSHS will provide the Tribe with a copy of the Indian child's amended certification of birth. If necessary, DSHS will request permission from the court to do so.

Prior to the conclusion of any superior court adoption proceeding involving an Indian child and in which the Tribe is not a party, DSHS, in proceedings in which it is involved, will seek permission from the court to send the Tribe a copy of the final decree of adoption and such other records or the proceeding as the tribe may request.

The Tribe agrees to maintain the confidentiality of records received pursuant to this section unless dissemination of information from the records is authorized by federal, state or tribal law. See Part II, Section 15 of this Agreement, regarding confidentiality of records and information.

## **SECTION 13**

### **RELEASE OF ADOPTION RECORDS TO ADOPTED INDIAN CHILDREN**

Under the act, an adopted Indian individual who has reached the age of eighteen may petition the court which entered the final decree of adoption for information on the individual's tribal affiliation and other information, including the names and last known addresses of the individual's biological parents, as may be necessary to protect the rights of the flowing from the individual's tribal relationship. To carry out the provisions of the Act, the court may order DSHS to release to the adopted Indian child information contained in the adoption records maintained by DSHS.

In the case of an Indian child adopted after the effective date of this Agreement, DSHS, within thirty (30) days after receipt of notice of an adoption of an Indian child, will notify the child's adoptive parents of the right provided in the Act to obtain adoption record information

In any case where DSHS is involved in a proceeding to voluntarily or involuntarily terminate the parental rights of a biological parent of an Indian child, DSHS will inform the biological parent of the right, under the Act of the Indian child to obtain adoption record information. Whenever possible the Tribe will assist DSHS to provide the information to the parent. Such parent shall be informed that if he/she wished to assist in the release of identifying information to a child who has reached eighteen or petitions the court for such information, such assistance may be provided keeping the court informed of the parent's current address.

Upon written request of any person who has reason to believe that he/she is an Indian, DSHS will inform such person of the court which entered the person's final decree of adoption and of the right provided in the Act to obtain adoption record information.

In order to notify Indian adopted children over the age of eighteen of their right under the Act to obtain adoption record information, DSHS, in cooperation with the Tribe, will develop and employ appropriate television, radio and newspaper announcements and seek appropriate media reports.

## **SECTION 14**

### **TRANSMITTAL OF COURT ADOPTION RECORDS TO SECRETARY OF THE INTERIOR**

When a superior court enters a final decree of adoption with respect to an Indian child, DSHS agrees to notify the court of the requirements of 25 U.S.C Section 1951 and will request the court to send to the secretary of the interior a copy of the final decree of adoption and the other adoption information required by Section 1951.

## **SECTION 15**

### **RECORD OF INDIAN CHILDREN IN FOSTER CARE AND ADOPTIVE HOMES AND PLACEMENT PREFERENCE COMPLIANCE RECORDS**

#### **A. Foster Care Record**

DSHS will establish and maintain a record of all Indian children currently placed in foster care in the State of Washington by DSHS or by certified agencies. The record will include Indian children placed in foster care in the State of Washington through the interstate Compact on the placement of Children or placed by the State of Washington in foster care in another state through said compact.

For any Indian child currently in foster care, the record will include:

1. The name of the child.
2. The child's date of birth.
3. The child's tribal affiliation.
4. The name and address (es) of the child's biological parents.
5. The address of the child's foster care placement
6. The name(s) of the child's foster parent or the identity of the foster care institutions in which the child is placed together with the name of the person in charge of said institution.
7. Whether the placement is in an Indian home or institution and, if so. The tribal affiliation of said home or institution.
8. Whether the foster home or facility is licensed or approved and, if so, by what authority.
9. Whether the home receives AFDC –FC or other subsidization for the care of the child.

10. Whether the home is a relative home and, if so, the relationship to the child.
11. A copy of the court order or other legal document approving the foster care placement of the child.
12. The name and address of the agency having legal custody of the child.
13. The accumulated length of time that the child has been in foster care.

Upon request, DSHS agrees to send the Tribe that name of all Indian children of the Tribe currently in foster care and will send the Tribe such other foster care record information evidencing the efforts of DSHS to comply with the foster care placement preferences required by the Act and this Agreement. The information or documents will be transmitted to the Tribe within ten (10) business days following receipt of the Tribe's request.

**j. Adoption Record**

DSHS will establish and maintain an adoption record for any Indian child placed in an adoptive home by DSHS or a state certified child placing agency and on behalf of whom a final decree of adoption was entered after November 7, 1978. The record will include:

1. The name of the child.
2. The child's date of birth.
3. The child's tribal affiliation.
4. The name and address (es) of the child's biological parents.
5. The names and address of the child's adoptive parent (s).
6. The tribal affiliation, if any, of the adoptive parents (s) and their biological relation, if any, to the tribe.
7. The date of the final decree of adoption and the court in which it was entered.



8. A copy of the final decree of adoption.
9. Whether the home receives an adoption subsidy for the care of the child.

Within two years following the effective date of this Agreement, DSHS agrees to complete the record to the extent the information is available, of all Indian children of the Tribe adopted in the State of Washington for whom a final decree of adoption was entered after November 7, 1978 and through the effective date of this Agreement. Upon completion of such record, DSHS agrees to send the Tribe the names of all Indian children of the Tribe listed in the record. Within one year following the effective date of this Agreement, DSHS will report to the Tribe on the status of the preparation of the record and will provide the Tribe with the names of the Indian children included in the record at that time.

DSHS will also include in the record the names of all Indian children of the Tribe who are placed in an adoptive home by DSHS or a state certified child placing agency for whom a final decree of adoption has been entered after the effective date of this Agreement. Semi-annually, DSHS will send the Tribe the names of all such children.

Upon request, DSHS will send the Tribe adoption record information evidencing the efforts to comply with the adoption placement preferences required by the Act and this Agreement. The information will be transmitted to the Tribe within ten (10) business days following receipt of the Tribe's request.

**PART X**

**MISCELLANEOUS PROVISION**

## **SECTION 1**

### **DSHS REVIEW OF FOSTER CARE AND PREADOPTIVE PLACEMENT**

DSHS agrees to conduct a review of all voluntary and involuntary foster care placements and preadoptive placements of Indian children not less than every six months unless such review are being conducted by Tribal or superior court. In any DSHS review of the foster care or preadoptive placement of an Indian child, the Tribe will have notice of and a right to participate in the review, including access to all files and documents pertaining to the placement. Unless mentally or physically rendered incapable of doing so, a child over the age of twelve shall also have a right to participate in the review. In reviews of voluntary foster care placements and involuntary foster care placements where parental rights have not been terminated, the parents or Indian custodians of the child will also be notified of the review and be accorded a right to participate in it.

If parental participation in the review is precluded by indigency, DSHS subject to available of funds will cover such reasonable expenses as may be necessary to assure meaningful participation by the child's parents.

At a minimum, the review will evaluate the suitability of the foster care or preadoptive placement, the necessity of continuing the child in foster care or in preadoptive placement, and the prospects for terminating the placement and returning the child to the custody of its parent (s) or Indian custodian or permanent of the child. The reviews will also evaluate the suitability and effectiveness of the services rendered to the child and its family and, where applicable, the factors specified in RCW 13.34. 130(3) (b). Whenever possible. DSHS agrees to involve a qualified expert(s) to participate in the review. When the foster care or preadoptive placement interracial, DSHS agrees, whenever possible, to involve a qualified expert in the interracial placement of Indian children.

## **SECTION 2**

### **GUARDIANSHIP—POST- PLACEMENT SERVICES**

Whenever a guardianship is deemed as the most appropriate placement for an Indian child, and guardian is appointed for the child's through superior court or tribal court, DSHS, in cooperation with the Tribe's social services program, will assist the child and the guardian in adjusting emotionally and psychologically to the guardianship placement and will offer such other foster care support and services as may be appropriate.

If the guardianship is established in a tribal court proceeding, DSHS will provide appropriate services in accordance with the procedures set forth in part 111, Section 6 of this Agreement.

If the guardianship is established pursuant to a guardianship petition filed by DSHS in superior court, DSHS will provide services in accordance with the requirements of Part V, Section 9 or Part V1, Section 9 of this agreement or , if the parental rights of the child's parents have been terminated prior to establishment of the guardianship, DSHS will provide services in accordance with the requirements of Part V, Section 12 or Part V11, Section of this agreement. In providing such services, DSHS need not regularly monitor the guardian's home, as required by the above-specified sections of this Agreement, unless such supervision is necessary or appropriate under the circumstances of a particular case.

## **SECTION 3**

### **RECRUITMENT AND LICENSING OF INDIAN FOSTER AND ADOPTIVE HOMES**

DSHS and the Tribe agree to jointly seek to recruit and license or approve Indian foster and adoptive homes. Recruitment will utilize the media, Indian organization resources, mailings to members of such organizations, door-to-door solicitation within Indian communities, national and regional adoption resource exchanges, and such other means as may be likely to succeed in securing Indian foster and adoption homes for Indian children. Recruitment shall include assisting potential homes to comply with tribal or state licensing or approval standards for foster or adoptive homes. Such assistance will, whenever necessary and subject to the availability of funds, include training of potential and other Indian foster parents.

DSHS also agrees to pay the costs of any foster and adoptive home recruitment jointly undertaken by DSHS and the Tribe.

#### **A. Registry of Indian Foster and Adoptive Homes**

Within one year from the effective date of this Agreement, DSHS agrees to establish and maintain a registry of all Indian homes in the State of Washington licensed and approved and available to receive Indian children for foster care or adoption. The registry will identify the name, address and tribal affiliation of the home, whether the home is available for foster care adoptive placement or both. The registry will also identify for each home any preconditions to the acceptance of a child, such as willingness to only accept a relation or a member of the same tribe or a child without mental or physical handicap, or that the home has indicated no preconditions. The registry shall also include for each home any home studies that may have been prepared. Upon request, and with the consent of the registered home, the Tribe will have access to any of the records maintained as part of the registry.

## SECTION 4 RIGHTS OF PUTATIVE FATHERS

The Act only applies to unwed fathers where paternity has been acknowledged or established.

Whenever DSHS, in circumstances where paternity has not been acknowledged or established, knows or has reason to believe that a particular person may be the unwed father of an Indian child who is the subject of a child custody proceeding in which DSHS is involved, DSHS agrees to send a notice to the putative father informing him of:

1. The legal circumstances of the child.
2. His legal rights under the Act and otherwise, if he acknowledges or establishes paternity.
3. Notice requirements of RCW 26.33.090/.110, if applicable.
4. The procedure for acknowledging or establishing paternity under state law.
5. The possibility of acknowledging or establishing paternity under tribal law or custom.
6. The potential legal consequences of his failure to acknowledge or establish paternity.
7. The date, time, location and nature of the next scheduled court proceeding in the matter, whether those notified must appear in person at such proceeding, and the legal consequences of failure to so appear.
8. Whether a written response to the complaint or petition must be filed and, if so, the date that the response must be received by superior court and the legal consequences of failure to file a written response.
9. The location, mailing address and telephone number of the clerk of the superior court before which the proceeding is pending and the name and telephone number of the judge of the superior court assigned to the case, if known.

Whenever a child custody proceeding in which DSHS is involved is commenced, DSHS will also notify the Tribe of the putative

father's identity and, if known, address. In the event that the putative father's identity or whereabouts are unknown, DSHS will seek the assistance of the Tribe in obtaining the information.



## **SECTION 5**

### **SERVICE OF FOSTER CARE, TERMINATION AND ADOPTION ORDERS OR DECREES**

In any superior court proceeding resulting in the court ordered foster care, preadoptive placement, or adoption of an Indian child, or in the termination of the parent-child relationship between and parent and an Indian child, DSHS, in proceedings in which it has been involved, will:

1. Serve a copy of any foster care or preadoptive placement order on the parents of the child and when appropriate, on the foster parents of preadoptive parents of the child.
2. In any foster care or preadoptive placement proceeding where an extended family member has requested and been denied the foster care or preadoptive placement of the child, serve a copy of the order form the proceeding on the extended family member.
3. Serve a copy of any termination of parental rights order on the terminated parent and on any parent whose parental rights have not been terminated.
4. Serve a copy of the decree of adoption on any parent who has consented to the adoption with knowledge of the identity of the adoptive parents and on any other party to the adoption proceeding.

Unless otherwise specified by law or court order, DSHS will serve copies of the foregoing orders on the guardian ad litem, if any, of the child.

The service required by this section shall be made directly on the persons entitled to service pursuant to the requirements of this section and on the attorney, if any, representing such persons. Service may be made my mail.

## **SECTION 6**

### **RELEASE TO TRIBE OF COURT FOSTER CARE, PREADOPTIVE PLACEMENT AND TERMINATION OF PARENTAL RIGHTS ORDERS**

If any superior court proceeding, in which DSHS is a party, resulting in the court ordered foster care or preadoptive placement of an Indian child or in the termination of the parent-child relationship between a parent and an Indian child, DSHS, when the Tribe has not been a party in the proceedings, will send the Tribe a copy of the order. Upon request, DSHS agrees to send the Tribe such other records of the proceeding as it may request. The records will be sent to the Tribe by certified mail return receipt requested within five (5) business days of receipt of the request. The Tribe will maintain the confidentiality of any records received from DSHS, as specified in Part II, Section 15 of this Agreement.

## **SECTION 7**

### **INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN**

DSHS and the Tribe agree to review the need for the Tribe's participation in the interstate compact as a member. If such participation is determined to be desirable, DSHS, in a manner it deems appropriate will assist the Tribe to become a member of the compact.

Whenever DSHS is considering whether to place an Indian child in another state, DSHS will follow the provisions of Part IX of this Agreement regarding placement of Indian children.

DSHS will provide the Tribe with information on all Indian children currently in placement who have been sent under the compact to another state or who have been sent by another state to the State of Washington. The information shall be include the name of the child, the child's age, the child's current address, the name and address of those with physical custody of the child, the name of the person(s) or agency with legal custody of the child, whether parental rights have been terminated, the names and addresses of the child's natural parents, the tribal affiliation, if any, of the child's natural parents, the purpose for or the reasons causing the placement, the expected duration of the placement, the location and name of the court before which any proceeding involving the child may be pending, and the date and nature of the next scheduled administrative or judicial review of the placement.

DSHS agrees to review each interstate placement of Indian children and determine, in cooperation with the Tribe, whether such placement should continue. If it is concluded by DSHS and the Tribe that a child placed by DSHS in another state should be returned to the State of Washington, DSHS will terminate the interstate placement pursuant to the provisions of the interstate compact and have the child returned to the State of Washington unless to do so would be likely to cause physical or emotional harm to the child.

If it is concluded by DSHS and the Tribe that the placement of an Indian child in the State of Washington by another state should be terminated, DSHS, in cooperation with the Tribe and pursuant to the provisions of the interstate compact will seek to terminate the placement and have the placing state follow the Tribe's recommendations with respect to the child.

In circumstances where the Tribe is not a member of the compact and all necessary requirements of RCW 26.34 and applicable state regulations have been or can be satisfied, DSHS, upon request by the Tribe, will assist the Tribe to utilize the interstate compact for the placement of Indian children in another state in a placement designated by the Tribe. In order for DSHS to make foster care payment for an Indian child placed in another state through the interstate compact, the placement must have been arranged through a certified or licensed child placement agency, or custody of the child must have been granted to DSHS prior to out-of-state placement. Notwithstanding a request of the Tribe for compact placement in another state, whenever any other tribe in which an Indian child is eligible for membership informs DSHS that it objects to compact placement of the child to another state, the requirement that DSHS assist the Tribe to arrange for compact placement will not apply in such circumstances unless no suitable placement exists within the State of Washington.

In circumstances where the Tribe is not a member of the compact, DSHS, upon request of the Tribe, agrees to receive Indian children through the compact who are the subject of child custody proceedings in another state and who are not in parental custody and to place such children in such placement as may be designated by the Tribe and the sending state/agency. Pursuant to the requirements of the interstate compact, prior to receiving the child for placement, DSHS must document in writing that the proposed placement does not appear to be contrary to the interest of the child. Unless DSHS so documents, the child shall not be sent to the State of Washington for such placement nor will DSHS receive the child for such placement.

In sending an Indian child to another state for placement or in receiving an Indian child from another state

for placement in the State of Washington, DSHS will evaluate any proposed placement in cooperation with the Tribe's social services program and in accordance with the provisions of this Agreement governing placement preferences and standards.

## **SECTION 8**

### **UNIFORM CHILD CUSTODY JURISDICTION ACT**

DSHS and the Tribe agree to review the need for the Tribe's adoption of this law. If such adoption is determined to be desirable, DSHS agrees to provide information to the Tribe on how to adopt this law in a way that will be recognized by the State of Washington and other states.